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THE

HISTORY

OF

SCOTLAND,

FROM THE

ESTABLISHMENT OF THE REFORMATION,

TILL THE DEATH OF

QUEEN MARY.

37035

TO WHICH ARE ANNEXED,

OBSERVATIONS CONCERNING THE PUBLIC LAW AND THE CONSTITUTION OF SCOTLAND.

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IN TWO VOLUMES.

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THE HISTORY OF SCOTLAND.

BOOK V.

1570.

THE assassination of the earl of Murray, which the House of Hamilton had promoted with a criminal zeal, roused the expectations of the friends of Mary. Thomas Ker of Fernihersť, and Walter Scot of Buccleugh, the night after this deed was perpetrated, led an army of the Scottish borderers into England, and satiated their fury with fire and the sword. By this inroad, they not only meant to gratify their avarice with booty, but to provoke a war with Elizabeth; which the adherents of the Queen of Scots considered as the measure the most effectual for uniting her subjects in her behalf. Elizabeth, penetrating into the motives of this insult, dispatched into Scotland Thomas Randolph to make her remonstrances to the privy council. After expressing to them the general affection of his mistress to their nation, and recommending, in her name, the preservation of the protestant religion, the safety of the young King, and the

An incursion is made into England.

The complaints and conduct of Elizabeth.

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puniſhment of the late murder, this envoy informed them, that ſhe conſidered the incurſion which had been made into her dominions as a private, and not as a national act; and that as the preſent convulſions of their country might not permit them to do her juſtice, ſhe would take that duty upon herſelf, and march an army into Scotland, which ſhould chaſtiſe the offenders, and abſtain from any injury to the innocent inhabitants. The earl of Morton, ſpeaking for the privy council, told Randolph, that till the affairs of the nation were brought into ſome order, no poſitive anſwer could be returned to his meſſage; and this reply ſuiting the inſtructions of this miniſter, he continued in Scotland to watch the operations of the two factions, and to advance the purpoſes and the views of the Engliſh Queen *.

The divided condition of the kingdom.

Uncertainty, diſorder, and diſtraction pervaded the kingdom. The relations of the Regent called aloud for an enquiry into his murder. The clergy iſſued an order for the excommunication of the murderer in every conſiderable town, and in every borough over the kingdom. The friends of the Queen even ſeemed to be eager to revenge his death; and both parties were ſeriouſly earneſt for the election of a ſucceſſor to him. Kircaldy of Grange, who was provoſt of Edinburgh, as well as governor of its caſtle, ſet at liberty the duke of Chatellerault, the lord Herries, and Maitland of Lethington. The private meetings of the Queen's friends, and of the adherents of her ſon, were frequent and anxious. Randolph was buſy in fomenting their diviſions, and in inflaming their hoſtilities. The duke of Chatellerault, and the earls of Morton and Marre were caſting their eyes to the Regency. The voice of the people

* Buchanan, Hiſt. Rer. Scot. lib. xx. Spotſwood, p. 234. Camden, p. 425.

was

was declaring itſelf for the elevation of the earl of Lennox to this high office; and it was conceived that he had the tendereſt concern in the welfare of the prince. He had taken an early opportunity to ſupplicate, in the humbleſt terms, the protection of Elizabeth to the perſon and kingdom of his grandſon; and being little formidable to her either from his abilities or his power, ſhe was ſecretly diſpoſed to advance his claim in preference to that of every competitor. Maitland, and a few moderate politicians, ſtretching their views beyond a preſent convenience, were ſolicitous to pour a balm into the bleeding wounds of their country, to cement the differences of the two factions, and to preſs the reſtoration of Mary with an unanimity and vigour that would command the compliance, though not the approbation, of Elizabeth *.

Operations of the two factions.

The earl of Morton placing himſelf at the head of the faction for the King, called a convention of the nobles to aſſemble at Edinburgh upon the twelfth day of February. The earl of Argyle, with the lords Boyd, Fleming, and Levingſton, meeting at Hamilton upon the part of the Queen, ſent diſpatches to Morton, deſiring, that the diet might be deferred to a more diſtant period, as the ſeaſon of the year was rigorous, as many perſons of diſtinction were at a great diſtance from the capital, and as it was right, that there ſhould be a full aſſembly of the nobility to deliberate concerning the preſent critical condition of the national affairs. If this deſire ſhould be diſregarded, they admoniſhed him, that they would conſider him and his friends as public enemies and traitors, and take the field againſt them in arms. The King's party, notwithſtanding, aſſembled

* Haynes, p. 575, 576, 577.

Book V. 1570. themſelves upon the appointed day; and taking no notice of this remonſtrance, iſſued a proclamation, which declared, that the murderer of the earl of Murray had been received with kindneſs at Hamilton, and that the nobles who had lately met there were acceſſory to the bloody deed. To this convention Maitland preſented himſelf, and proteſted his innocence of the murder of the late King with which he had been charged by captain Crawfurd; and the earl of Morton, and his aſſociates, being willing to conciliate to them ſo able a ſtateſman, a declaration was made, which recognized him as an honeſt man, and branded the accuſation againſt him as a calumny*. He was therefore holden to be vindicated, and was admitted to his place of ſecretary of ſtate. He went not, however, into the faction of the King's friends; and when the buſineſs of electing a Regent was debated, he employed his ability in painting, in the ſtrongeſt colours, the unhappy diviſions of the nation; and in urging the wild impropriety of proceeding to a tranſaction of the greateſt moment, when there was not a full convention of the nobility. His eloquence, the unſettled views of the perſons to whom he addreſſed himſelf, the colliſion in their private intereſts, and their ignorance of the deſigns of the Queen of England, concurred to give a force to his ſentiments; and it was agreed, that a general and amicable meeting of the two factions ſhould be held in the month of March. This new meeting accordingly took place. It was propoſed by the lords for the Queen, that meaſures ſhould be concerted for her re-eſtabliſhment in her kingdom; and that in the mean time, a Regent or Viceroy ſhould be elected. The lords for the King, ſuſpicious of their ſtrength, inſiſted, that they had been

12th February.

14th March.

* Crawfurd, Memoirs, p. 132.

convened

convened for upholding the preſent government, and not for creating a new one. Opinions ſo oppoſite, engendered diſcord, and debates. The earl of Argyle, and other nobles, had refuſed to attend this conference; and there was thus a pretext for another delay. The arts of Maitland foſtered the embaraſſments of the rival factions. No reſolutions were entered into; and it was conceived to be prudent, to leave all public deliberations to the three Eſtates; a meeting of which had been called to aſſemble upon the firſt day of May *.

Theſe diſtruſtful conventions agitated the nation, and inflamed its diſtreſſes. Popularity and adherents were anxiouſly courted by both parties; and they neglected not to apply reſpectively to Elizabeth. The King's friends detailed the growing ſtrength of their adverſaries, preſſed the return of the earl of Lennox, and earneſtly ſolicited her countenance and protection. The earls of Huntley and Argyle, with the lords for Mary, urged her to advance in the buſineſs of the reſtoration of their ſovereign, apologized for the inroad which had been made into her dominions, promiſed an ample compenſation to her ſubjects for the loſſes they had ſuſtained, and entreated that in the preſent convulſions of their country, ſhe would abſtain from marching an army into it to revenge and retaliate the hoſtilities of the Scottiſh borderers †. Mary herſelf, in a letter ‡ to Elizabeth, had repreſented the favourable ſituation of her affairs, and had warmly requeſted an aid of two thouſand men. This force ſhe deemed ſufficient in the preſent juncture, for the ſupport of her friends, and the humiliation of her

Mutual applications are made to Elizabeth.

* Spotſwood, p. 235. Crawfurd, Memoirs, p. 134.

† Camden, p. 425. ‡ Fenelon, Dep. 89, 91. ap. Carte, vol. iii. p. 498.

 enemies.

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enemies. The Queen of England, however, had other objects in view; and, in her tranſactions with Mary, her paſſions and her honour were almoſt conſtantly at variance.

An envoy arrives from France with diſpatches to the Queen's Friends.

In this ſeaſon of turmoil and ſuſpence, Monſieur Verac arrived from Charles IX. with letters to the nobles of Mary's faction, extolling their loyal perſeverance, and giving them the hope of a powerful body of troops, with which to advance the intereſts of the Queen of Scots. Elated with this attention, relying on the proffered ſuccours, confident of the friendſhip of the king of Spain, ſurveying with partiality their natural reſources, and fearful of the inſidious policy of the Queen of England, they were more and more convinced, that the ſword alone could conduct them to ſucceſs, and ſeat Mary upon her throne. Convening at Linlithgow, they reſolved to repair to the capital as the ſcene where they could deliberate and act with the greateſt propriety. They accordingly advertiſed its magiſtrates of their approach; and were informed, that the gates of Edinburgh were open to all the ſubjects of the King; but that they would be ſhut upon all perſons ſuſpected of a concern in the murder of the earl of Murray, and upon the fugitives from England, who had been engaged in the inſurrections againſt Elizabeth. Theſe conditions, though ſomewhat humiliating to them, were accepted; and they entered the capital with the hope of alluring the inhabitants to their purpoſes. They publiſhed a manifeſto, in which they expreſſed their affection to the proteſtant religion, their readineſs to agree to reaſonable terms of accommodation with the nobles who had hitherto oppoſed them, and their deſire to aſcertain the royal ſucceſſion, to conſult the preſervation of the prince, and the general eſtabliſhment of the realm in amity and union.

They take poſſeſſion of Edinburgh.

31ſt April.

They invited the inhabitants to concur with them in theſe ſalutary meaſures; and they proteſted, that if the party, calling themſelves the King's friends, ſhould diſregard this invitation and overture, the blame of all the inconveniencies that might enſue ſhould be imputed to them *.

The obſtinacy of the king's friends.

The pacific language of this manifeſto, had no influence upon the earl of Morton and his party. It was in vain that deputations were ſent to him at Dalkeith, where he reſided at this time with his particular friends.

Elizabeth marches an army into Scotland.

He was now apprized of the intentions of Elizabeth, and was preparing to advance them. Under the pretence of chaſtiſing the incurſion which had been made into England, ſhe had been putting an army into readineſs to take the field. The biſhop of Roſs, and the French ambaſſador, were in vain urgent with the privy council of England, that commiſſioners of each nation ſhould adjuſt the damages committed by the Scottiſh borderers, and aſcertain the compenſations that ſhould be made to the perſons who had ſuffered †. The earl of Suſſex, with a great force, arrived at Berwick. The nobles of the Queen's faction abandoned Edinburgh, and took up their reſidence at Linlithgow. The earl of Suſſex, entering Tiviotdale, and meeting no oppoſition, deſtroyed fifty caſtles, and three hundred villages. The lord Scroop, invading the weſtern borders, marked alſo his progreſs with a cruel deſolation, and ſpread the terror of the Engliſh arms ‡. A courier from the nobles at Linlithgow entreated the Earl of Suſſex to ſtop hoſtilities till a full repreſentation of the Scottiſh affairs could be ſent to his miſtreſs. It was returned to them for anſwer, that he would obey the inſtructions he had received, and that he was not

18th April.

* Spotſwood, p. 236. † Leſly, Negociations, p. 89.
‡ Cabala, p. 174, 175.

Book V. impowered to conclude any truce or treaty. A deputation from the King's faction was received by him with greater politeneſs; and he agreed to conduct the earl of Lennox to the capital, under the protection of a force which could have nothing to fear from the adherents of the Queen *.

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1ſt May. The two factions prepare for war.

Upon the approach of the day for the meeting of the three Eſtates, the King's friends were eager to repair to Edinburgh. In their turn they ſent to the Queen's lords an overture for the re-eſtabliſhment of affairs; and they held out the unlimited acknowledgment of the authority of the King, as the foundation of a compact, or agreement. This overture, however, was treated with ſcorn by Mary's adherents, who declared that they knew no ſovereign but the Queen, and that ſhe had committed the charge of her government to the duke of Chatellerault, and the earls of Argyle and Huntley. They then proclaimed publickly the authority of Mary, together with the powers of theſe noblemen as her lieutenants, and indicted a parliament to aſſemble at Linlithgow in the month of Auguſt. The King's party, acting in the character of a convention of the Eſtates, diſcovered a paſſionate diſapprobation of theſe proceedings; and publiſhing a manifeſto, reproached their opponents as conſpirators and rebels, and commanded, under the pain of treaſon, all perſons whatſoever, who had joined them out of ſimplicity and ignorance, to return immediately to their allegiance, and to diſperſe themſelves. The law of the ſword was now to decide all diſputes, and preparations for hoſtilities were openly made by the two factions. The friends of Mary diſpatched Monſieur Verac to France, to haſten the ſuccours which had been promiſed by Charles IX. and the lord Seaton was

* Melvil, Memoirs, p. 208. Spotſwood, p. 237.

ſent

ſent ambaſſador to the duke of Alva, to preſs for ſupplies of money and ſoldiers on the part of the king of Spain. The friends of the King, more ſecure in the protection of Elizabeth, informed the earl of Suſſex, that the time for her to declare herſelf was arrived *.

Elizabeth joins the forces of the earl of Morton and his party.

The earls of Morton, Marre, and Glencairn, with the lords Lindſay, Ruthven, and Ochiltree, holding themſelves out as the heads of the King's faction, it was required of them by the Engliſh commander, that they ſhould enter hoſtages at Berwick for their fidelity to his miſtreſs. No objections were made to this requeſt. The lord Ochiltree ſurrendered himſelf into cuſtody; and each of the other parties gave up a friend as his ſecurity. Sir William Drury, attended by the earl of Lennox, put himſelf in motion at the head of twelve hundred foot, and four hundred horſe †; and was immediately followed by the earl of Suſſex himſelf with a more formidable army. The Engliſh troops joined themſelves to thoſe of the King's friends in the neighbourhood of Edinburgh. The Queen's friends had gone from Linlithgow to Glaſgow, and made an unſucceſsful aſſault upon the caſtle there. The troops of Elizabeth, and the King's adherents, took the field againſt them; and the faction for the Queen being unable to defend themſelves, ſought for ſafety in flight. There enſued a pitiful devaſtation of the territory, caſtles, and houſes of the duke of Chatellerault, his kindred and partizans, in the ſhires of Clideſdale and Linlithgow. After giving this blow to the greatneſs of the family of Hamilton, the Engliſh commanders retired unexpectedly to Berwick; and taking with them the earl of Morton, ſurrendered to him the hoſtages which they

* Spotſwood, p. 238. † Murdin, State Papers, p. 769. Camden, p. 426.

had

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had received as the ſecurity of the attachment of the King's friends to the Queen of England*.

1570. She pretends a friendſhip to Mary, and engages her in a deceitful negociation.

It was not a principle of juſtice or compaſſion that induced Elizabeth to put a ſtop to the ravages of her troops. The atrocity of her behaviour to Mary, and the indignation it had excited in foreign nations, began now to fill her with apprehenſions and inquietudes. Charles IX. was about to conclude a peace with the Hugonots; and his partiality to the Queen of Scots had been always exceſſive. Nor was it only as a Catholic princeſs, and an ally that he reſpected her. His heart had been deeply wounded with her beauty; and he could never look at her picture without indulging himſelf in emotions of tenderneſs and love. He had often declared his reſolute purpoſe to re-eſtabliſh her in her dominions; and, at this time, the diſpatches of Sir Henry Norris, the ambaſſador of Elizabeth at his court, were full of intimations of a deſign he had formed of tranſporting forces to Scotland. The Roman Catholic Powers were in general infinitely diſpleaſed that a Proteſtant princeſs ſhould detain in fetters a Queen of that church, out of which there is no ſalvation. The pontiff, Pius V. ſtimulated their zeal, and, encouraged by their conſequence, was fomenting commotions in England; and he had lately ventured upon a ſtep which was open, public, and alarming. Exerting the plenitude of his apoſtolic juriſdiction, he had iſſued a bull, which denounced the ſentence of excommunication againſt the Engliſh Queen, declared her to be deprived of her kingdom, and commanded her ſubjects not to preſume to pay any obedience to her orders †. Surmiſes had

* Cabala, p. 178. Spotſwood, p. 240. † Camden, p. 427, 428.

ſpread

ſpread over England, that ſome extraordinary atchievement was in agitation. All the tormenting jealouſies of her nature were awakened; and ſhe reſolved to avert the machinations of the popiſh potentates by the arts of intrigue and addreſs. She affected a ſympathy for the misfortunes of Mary; and ſeeming to pay a reſpect to the preſſing ſolicitations of the French ambaſſador, and the biſhop of Roſs, ſhe recalled her troops out of Scotland*. She even diſplayed a ſolicitude to reſtore Mary to her crown; and the heads, or articles of a treaty for this purpoſe, were repeatedly the ſubject of deliberation between the privy council of England, the French ambaſſador, and the biſhop of Roſs. Mary, who after the ſuppreſſion of the popiſh inſurrection had been carried back to Tutbury, and had been relieved from the guardianſhip of the earl of Huntington, was watched with leſs ſeverity. Her friends flattered her with hope; and the earl of Shrewſbury, who, at this time, was happy to be inſtructed to ſhew her any indulgence, had written to Cecil, that ſhe was in a diſpoſition to accord to any reaſonable conditions of agreement which Elizabeth would propoſe to her†.

The earl of Lennox is appointed to the regency.

The King's lords, who were diſconcerted with the ſudden recal of the Engliſh army, were ſtill more alarmed when they heard that a treaty was about to be concluded for the reſtoration of Mary. They had taken an early opportunity to diſpatch Pitcairn, abbot of Dunfermling, to act as their ambaſſador in the court of Elizabeth; and he wanted neither the inclination nor the ability which were neceſſary to conduct their affairs. As the ambiguity of her carriage did not eſcape his penetration, he was the more earneſt in deſcribing to her

* Leſly, Negotiations, p. 91, 94. † Haynes, p. 593.

their

Book V. 1570. their precarious ſituation, and the certain ruin that muſt overwhelm them, if they ſhould be diſappointed of her powerful and decided patronage. In anſwer to his remonſtrances, ſhe informed him, that the importunities of the ambaſſadors of foreign ſtates, and the death of the earl of Murray, had induced her to reſolve to try anew by commiſſioners, the differences of the Queen of Scots and her ſubjects; and ſhe recommended it to him to intimate to his faction, that ſhe was deſirous they ſhould abſtain from hoſtilities and war, and delay, for ſome time, the election of a Regent. By this irreſolution, ſhe kept alive and exaſperated the animoſities of the rival parties. It was the intereſt of the King's friends to accommodate themſelves to her humour; and her apparent indifference to them rouſed the expectations of their adverſaries. The earls of Morton, Marre, and Glencairn, felt themſelves to be weakened by the coldneſs of their adherents, and by actual defections. They apprehended the growing authority and ſtrength of their opponents; and were ſenſible that the nomination of a Regent could alone give their faction a proper union and conſiſtency. Till this advantage could be accompliſhed, it was their buſineſs to adopt ſome expedient that would ſuit their condition, and not offend the Queen of England. The counſels of Randolph, the Engliſh reſident, aſſiſted their invention. It was reſolved, that a temporary governor, under the title of Lieutenant, ſhould be conſtituted with ample powers; and to this diſtinction they advanced the earl of Lennox. An early day was then appointed for a convention of the Eſtates; and while reſpectful diſpatches intimated theſe proceedings to Elizabeth, they warmly ſolicited her final advice in the choice of a Regent. Her inſidious

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ſidious arts were thus called again into practice; and a letter from her informed them, that as great diſorders might be the conſequence of a delay in filling up the high office of Regent, ſhe would not oppoſe any longer their deſire to proceed in that buſineſs. The abilities of the Scottiſh ſtateſmen, ſhe ſaid, were beſt known to themſelves; and ſhe would willingly give her conſent to any reſolution into which they ſhould enter. She neglected not, however, the precaution of obſerving to them, that the earl of Lennox, whom they had choſen to be lieutenant of the realm, was, in her opinion, very well qualified to ſuſtain the Regency. The earls of Morton, Marre, and Glencairn, were fully ſatisfied with this explanation of her meaning. To the convention of Eſtates, with a view to which her letter had been obtained, it was formally ſubmitted; and after Randolph had commented upon it in an elaborate harangue, the earl of Lennox was unanimouſly elected to be Regent of Scotland, till the King ſhould attain his majority, or be able to take upon himſelf the adminiſtration of the public affairs*. 17th July.

Advances are made in a negociation with the Queen of Scots.

Elizabeth, in the mean time, granted liberty to the biſhop of Roſs to repair to the Queen of Scots, who had been removed to Chatſworth, and to confer with her on the ſubject of the intended accord and treaty. Mary, conforming to the advances of Elizabeth, authoriſed the lord Levingſton to paſs to her dominions, and to deſire her friends to appoint a deputation of their number to give their aſſiſtance in promoting the ſalutary purpoſe of eſtabliſhing the tranquillity of their country; and after meeting with ſome interruptions upon the Engliſh borders from the

* Murdin, p. 770. Camden, p. 426. Spotſwood, p. 241.

earl

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earl of Suſſex, this nobleman executed ſucceſsfully his commiſſion. The Queen's lords gave powers to ten nobles * to act in a body, or by two of their number, in the intended negociation; and a ſafe-conduct from Elizabeth allowed them to enter the Engliſh realm, and to remain in it during the ſpace of ſix months †.

The earl of Lennox enters upon his adminiſtration.

The earl of Lennox had too many paſſions to gratify, not to be eager to enter upon his adminiſtration. It was his firſt care to defeat the meeting of the parliament which the Queen's friends had indicted to be held at Linlithgow. For this purpoſe, he proceeded to that town with a train of five thouſand perſons. He then undertook an expedition againſt the earl of Huntley; and inveſting Brechin, where that nobleman had ſtationed ſome troops, he forced it to ſurrender, and as an act of terror, ordered thirty-four ſoldiers to be hanged in his preſence. Other places of ſmall ſtrength were taken by him; and the ſpoil and oppreſſions which he was forward to exerciſe upon the adherents of the Queen, exciting frequent complaints to Elizabeth, ſhe obliged him to conſent to a truce of a few months, on the foundation of the treaty that was in agitation for the final ſettlement of the Scottiſh affairs ‡.

Articles of Agreement propoſed to Mary by Elizabeth.

While the lord Levingſton was conſulting the intereſts of Mary with her friends in Scotland, the biſhop of Roſs was making earneſt ſuit with Elizabeth to proceed in the projected negociation. His ſolicitations were not ineffectual; and Sir William Cecil, and Sir Walter Mildmay, re-

* The earls of Huntley, Argyle, Athol, Caſſilis, Rothes, and Cathneſs; the biſhop of Galloway, and the lords Livingſton, Boyd, and Herries.

† Haynes, p. 607. Leſly, Negociations, p. 96.

‡ Spotſwood, p. 243. Leſly, Negociations, p. 97.

ceived

ceived the inſtructions of their miſtreſs to wait upon the Queen of Scots at Chatſworth *. The heads of accommodation which they propoſed were explicit and particular; and the rigour they diſcovered towards the Scottiſh princeſs, ſeemed to vouch their ſincerity. It was propoſed that a perfect amity ſhould take place between the two Queens; that all the treaties, which had formerly been concluded by the two nations, ſhould receive an ample confirmation; that the Queen of Scots ſhould ratify the treaty of Edinburgh, and forbear from advancing any title or claim to the crown of England during the life of Elizabeth, or to the prejudice of the heirs of her body; that in caſe of foreign invaſions, the two realms ſhould mutually aſſiſt each other; that all foreign ſoldiers ſhould be ordered to depart out of Scotland; that in the future, ſtrangers of the profeſſion of arms ſhould be prohibited from repairing to it, and from taking up their reſidence in any of its caſtles, or houſes of ſtrength; that Mary ſhould hold no correſpondence, directly or indirectly, with any ſubject of England, without the permiſſion of the Engliſh Queen; that the earl of Northumberland, and the Engliſh rebels

* "I am thrown into ſuch a maze at this time, that I know "not how to walk from danger. Sir Walter Mildmay and I "are ſent to the Scottiſh Queen, as by the Queen's majeſty's "letters you may ſee: God be our guide; for neither of us "like the meſſage." Cecil to Sir Henry Norris, Sept. 26, 1570. Cabala, p. 179. In a letter of an earlier date to the ſame perſon, Cecil has this paſſage. "God ſend her majeſty "a good iſſue of this Scottiſh matter, whereinto the entry is "eaſie, but the paſſage within doubtful, and I fear the end "will be monſtrous." May 23, 1570. Cabala, 177. This ſagacious ſtateſman obſerved, doubtleſs, that time, which is the grave of common reſentments, had rather augmented the angry paſſions of Elizabeth. His penetration was not deceitful. The end of the quarrel of the two Queens was indeed monſtrous.

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in Scotland, ſhould be delivered up to Elizabeth; that redreſs ſhould be given to the ſubjects of England for the ſpoils committed upon them by the Scottiſh borderers; that the murderers of the lord Darnley, and the earl of Murray, ſhould be duly and effectually puniſhed; that before the Queen of Scots ſhould be ſet at liberty, the young prince, her ſon, ſhould be brought into England, and that he ſhould continue in the keeping of Elizabeth till the death of his mother, or till her reſignation to him of her crown on his attaining his majority; that the Queen of Scots ſhould not enter into a negociation for her marriage, without the knowledge of the Queen of England; nor conclude it without her approbation, or that of the greateſt part of the Scottiſh nobility; that none of the ſubjects of Scotland ſhould be ſuffered to go to Ireland, without the ſafe-conduct of Elizabeth; and that Mary ſhould deliver to her ſiſter all the teſtimonies and writings which had been ſent from France, renouncing and diſavowing the pretended marriage between her and the duke of Anjou *. Beſide theſe articles of agreement, it was propoſed by another treaty to adjuſt the differences of the Queen of Scots and her ſubjects; and Sir William Cecil and Sir Walter Mildmay embraced the preſent opportunity of conferring with her upon this buſineſs, under the pretence of facilitating its management in the future ſtages of its progreſs †.

Mary is deſirous to negociate.

During their ſtay at Chatſworth, theſe ſtateſmen were completely ſatisfied with the behaviour of the Queen of Scots. The candour, ſincerity, and moderation, which ſhe diſplayed, were full

* Haynes, p. 608, 612. Leſly, Negociations, p. 101, 102.
† State Papers, vol. B. p. 293. Haynes, p. 616, 620. Leſly, Negociations, p. 103.

aſſurances

aſſurances to them that upon her part there was no occaſion to apprehend any improper policy or art; and the calamities of her condition were a ſtill ſecurer pledge of her compliance. Elizabeth, upon hearing their report, affected to be highly pleaſed with her ſiſter, and ſent a meſſage to the earl of Lennox, inſtructing him in the conditions which had been ſubmitted to Mary; and deſiring him to diſpatch commiſſioners into England to deliberate in the treaty, and to conſult his intereſt, and that of his faction. Nor did Mary neglect to tranſmit to her friends in Scotland, the propoſed terms of agreement; and the biſhop of Roſs, who had aſſiſted her in the conferences with Sir William Cecil, and Sir Walter Mildmay, conveyed intimations of them to the pope, the king of France, and the duke of Alva, beſought their advice, and informed theſe princes, that unleſs an effectual relief could be expected from their favour, the neceſſities of her condition would compel her to ſubſcribe to the hard and humiliating dictates of the Queen of England *.

The inſincerity of Elizabeth.

The King's friends oppoſe the treaty.

But while Mary and her faction were indulging the hope of a termination to her troubles, Elizabeth was ſecretly giving comfort to her adverſaries, and encouraging them to throw obſtacles in the way of the treaty. Sir William Cecil wrote to the Regent, expreſſing his diſapprobation of the negociations at Chatſworth; deſiring him not to be apprehenſive of the boaſtings of the adherents of the Queen of Scots; and adviſing him to make choice of commiſſioners in the name of the King, in whoſe conſtancy and fortitude he could rely, and whom no addreſs could allure

* Leſly, Negociations, p. 109.

Book V. 1570. from his intereſt, or from the common cauſe in which he and his friends were embarked*. The earl of Suſſex alſo ſent him diſpatches, in which he admoniſhed him to turn his anxious attention to the approaching negociation, and to inſiſt on ſecure ſtipulations, for the preſervation of the prince, for his own ſafety, and for a general indemnity to the nobles and their adherents, whoſe party he had eſpouſed. In every event, he repreſented it as proper for him to pay the greateſt reſpect to Elizabeth; and if no treaty ſhould be concluded, he adviſed him to be prepared for reducing the friends of Mary to obedience, and for defending himſelf againſt invaſions from abroad †. By theſe artifices, the Regent and his faction were inclined to intimate to Elizabeth their warm diſſatisfaction with the terms of agreement which ſhe had propoſed to Mary; and Pitcairn, abbot of Dunfermling, who had been appointed ſecretary of ſtate in the room of Maitland of Lethington, was deputed to her upon this buſineſs. He exclaimed againſt the treaty as wild and impolitic; and contended, that no ſtipulations could bind Mary, whoſe religion taught her to keep no faith with heretics; that her claims to the Engliſh crown, and her reſentment againſt the Queen of England, as well as her own ſubjects, would immediately upon her reſtoration involve the two kingdoms in blood; and that no peace or quiet could be expected or enjoyed, but by adhering to the ſalutary maxim of detaining her in a ſure and cloſe captivity. Elizabeth did not diſcourage theſe inclement ſentiments; and Pitcairn was aſſured by her, that from her natural love to the King, and her regard to the nobles who upheld his authority, ſhe would faithfully

* Spotſwood, p. 245. † Ibid. p. 246.

provide

provide for their ſecurity; and that if juſtice ſhould appear deciſively upon their ſide, ſhe would even ſtrenuouſly maintain their quarrel, and their conſequence *. Book V. 1570.

Mary had been carried to Sheffield, and was recovering from a feveriſh indiſpoſition. To this place the biſhop of Galloway and the lord Levingſton, who had been ſelected by her friends to be her acting deputies in England, repaired in order to impart to her the ſtate of affairs in Scotland, and to receive her commands. After repeated conferences on the ſubject of the approaching treaty, ſhe gave them her commiſſion and inſtructions, and joining to them the biſhop of Roſs, ſent them to Elizabeth. They claimed an audience of this princeſs, and were admitted to it at Hampton Court. Having preſented their credentials, they informed her, that they were ready to conclude a treaty of concord and agreement upon principles the moſt extenſive and liberal; and, repreſenting to her the impoveriſhed and tumultuous ſtate of their country, they begged her to proceed in the buſineſs with expedition. The orders, they ſaid, which they had received, and their own inclinations, diſpoſed them to follow her advice and counſel in all points which were honourable and conſiſtent with reaſon; and as her protection was the only refuge of the adverſaries of their Queen, they took the liberty to obſerve, that it was completely in her power to put a period to all diſturbances and animoſity, and to accompliſh an accord, which would not only confer upon her the higheſt reputation, but be of the moſt ſignal utility to the two kingdoms. Elizabeth declared, that it would pleaſe and flatter her in no common degree, to advance in the

Mary's commiſſioners have an audience of Elizabeth. December.

14 January, 1571.

* Spotſwood, p. 247, 248.

Book V. 1571. negociation; and that it was a pain to her that the Regent, by his delay in ſending commiſſioners, ſhould diſcover any averſion from it. This anſwer was deemed very favourable by the biſhop of Roſs and his aſſociates; and they obtained her authority to diſpatch a meſſenger to the Regent to haſten his operations *.

The Roman Catholic powers adviſe Mary to accept of the accommodation propoſed by Elizabeth.

In the mean time, Mary received diſpatches from the pope, the king of France, and the duke of Alva; and they concurred in recommending it to her to accept of the articles of accommodation which were offered by Elizabeth. The Turk was giving employment to the pope and the King of Spain; Charles IX. already enfeebled by the obſtinate valour of the Hugonots, was buſy in deceiving them with appearances of peace, and in plotting their overthrow; and the duke of Alva felt himſelf inſecure in his government of the Netherlands. But while it was their counſel to Mary to conclude an agreement with the Queen of England, they were yet laviſh to her of their expreſſions of a conſtant amity; and if the treaty ſhould miſcarry, they promiſed to exert in her behalf all the efforts in their power, and to aſſiſt her adherents with money, ammunition, and troops †.

The commiſſioners of the Regent and his faction attempt to juſtify the depoſition of the Queen of Scots.

The earl of Morton, the abbot of Dunfermling, and Mr. James Macgill, had been appointed by the Regent and his faction to be their commiſſioners in the name of the King; and at length their arrival was announced to Elizabeth. Conforming to the ſpirit of their party, the earl of Morton and his colleagues took an early opportunity to juſtify to her the depoſition of the Queen of Scots, and by this means to interrupt the progreſs of the treaty. In an elaborate me-

* Leſly, Negotiations, p. 115, 119. † Ibid, p. 120, 124.

morial,

morial, they affected to conſider Mary as unworthy to reign, and aſſerted the conſtitutional power of the people to curb her ambition, and to throw her down from royalty. They endeavoured to intrench themſelves within the authority of laws, civil, canon, and municipal; and they recited opinions to her prejudice by many pious divines. But though the general poſition that the people have a title to reſiſt the domination of the ſovereign is clear and indubitable; yet their application of it to the Queen of Scots, was wildly precarious and improper. To ſpeak of her tyranny, and her violation of the rights of her people, was even a wanton mockery of truth and juſtice; for inſtead of having aſſumed an illegal exorbitancy of power, ſhe had ſuffered in her own perſon and rights, and had been treated by her ſubjects with the moſt cruel and tyrannical inſult. Elizabeth, who was unwilling and afraid to enter anew into the conduct of Mary, who was completely conſcious of the inſolence of her adverſaries, and who did not approve of any maxims that preſſed againſt the majeſty of princes, received their memorial with ſurprize and indignation. She perceived not, ſhe told them, any reaſon that could vindicate the ſeverity which had been ſhewn to the Queen of Scots by her enemies; and counſelled them to remember, that in the preſent negociation it was their proper buſineſs to conſult the ſecurity of the King, and of their faction *.

The commiſſioners of Elizabeth hold conferences with thoſe of Mary. March.

Upon the part of Elizabeth, the commiſſioners were the lord keeper Bacon, the earls of Suſſex and Leiceſter, the lord Clynton, the lord Chamberlain, Sir William Cecil, who about this time was created lord Burleigh, Sir Francis

* Camden, p. 431.

BOOK V. 1571. Knollys, Sir James Croft, Sir Walter Mildmay, and Sir Thomas Smith. The deputies of Mary were invited to meet with the Engliſh commiſſioners in the houſe of the lord keeper; and after he had ſtated the general purpoſes of the treaty, he intimated to them, that there were two points which required a particular diſcuſſion. A proper ſecurity, he ſaid, ought to be given by the Queen of Scots for her due performance of the ſtipulations of the accord with Elizabeth; and it was expedient to concert the mode of the pardon and indemnity which ſhe was to extend to the ſubjects of Scotland who had offended her. As an aſſurance of the accommodation with his miſtreſs, he demanded, that the duke of Chatellerault, the earls of Huntley and Argyle, the lords Hume and Herries, with another perſon of high rank, ſhould be ſurrendered to her, and remain in England for three years; that the caſtles of Dunbarton and Hume ſhould be in her poſſeſſion during the ſame period; and as to the article concerning the delivery of the prince into her cuſtody, he obſerved that it would be required from the Regent; the Queen of Scots not having the power of its performance. The deputies of Mary, ſurprized with this language, intreated the Engliſh delegates to reflect, that their Queen, if deprived of the moſt faithful of her nobles, and of her ſafeſt forts, could have little deſire or ambition to return to her own kingdom. For ſhe would thus be unable to protect herſelf againſt the turbulence of her ſubjects, and be a ſovereign without friends, and without ſtrength. They were inclined, they ſaid, to put their commiſſion and powers to the fulleſt ſtretch, in order to gratify Elizabeth; and they would agree, that two earls, and two barons, ſhould be ſurrendered, for two years, as hoſtages of the fidelity of their ſovereign;

reign; under the reſtriction that they might be exchanged every ſix months for perſons of an equal condition, if they ſhould be deſirous of returning to their own country. As to the giving up of any forts or caſtles, they would not agree to it, becauſe among the other inconveniencies of this meaſure, a ſimilar claim would be competent to the King of France, by the ſpirit of the treaty of Edinburgh *, which ſtipulated, that no French or Engliſh troops ſhould be admitted into Scotland. The lord keeper Bacon, reſuming his diſcourſe, told them, that the whole realm of Scotland, its prince, nobles, and caſtles, were an inadequate pledge to the Queen of England; and that, if his advice would be followed, the Queen of Scots ſhould not obtain her liberty upon any kind of ſecurity which could be granted by the Scottiſh nation †. In all public treaties, ſaid the delegates of Mary, no farther aſſurance can be required from a ſovereign than what conſiſts with his ſafety; and when exactions are preſſed from a contracting party in a league which are ruinous and impoſſible, it is underſtood, that a foundation is ſought to break off the negotiation. The Engliſh commiſſioners, now interfering in a body, declared upon their honour, that it was the meaning of Elizabeth to agree to the reſtoration of the Queen of Scots to her crown and realm, upon receiving ſufficient aſſurance for the articles of the accommodation; that the ſecurity offered for her acceptance, ſhould be ſubmitted to her deliberation; and that they would immediately proceed to confer with the deputies for the King of Scots ‡.

The Engliſh commiſſioners were not unacquainted with the ſentiments of the earl of Mor- They confer with the King's deputies.

* An. 1560. † Camden, p. 431. ‡ Leſly, Negotiations, p. 127, 132.

 ton

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ton and his colleagues; and it was from this quarter that they expected a resolute and definitive interruption to the treaty. Nor did these delegates disappoint the expectations conceived of them. After affecting to take a comprehensive view of the articles under debate, they declared, that their commission gave them authority to treat about the amity of the two kingdoms, and the maintenance of the true religion; but that it conferred upon them no power to receive their Queen into Scotland, or to surrender to Elizabeth the person of their King. They therefore begged not to be urged to accede to a league, which, in some future period, might expose them to a charge of high treason *.

Elizabeth obstructs the treaty.

This singular declaration was considered to be solid and weighty by the English commissioners; and, in a new conference, it was communicated by them to the deputies of Mary. The bishop of Ross and his associates, were disgusted with this formal impertinence. They did not hesitate to pronounce the plea of an insufficient commission from the King to his delegates, to be an unworthy, and most frivolous subterfuge. The authors, they said, of the deposition of their sovereign, did not need any authority but their own to set her at liberty; the prince was not yet five years of age, and could give them no instructions; and the Regent was wholly dependent upon the will and pleasure of the Queen of England †. It was represented in return by the English delegates, that the commission of King James to his deputies, having been perused by Elizabeth, was accounted by her to be insufficient; and that it was her opinion, that the earl of Morton should return to Scotland to hold a parliament

* Haynes, p. 623. † Camden, p. 432. Lesly, Negociations, p. 133, 134.

for

for obtaining new powers. The biſhop of Roſs exclaimed, that the Queen of Scots had been amuſed with deceitful promiſes, that the prudence of Elizabeth had been corrupted by partial counſels, and that the allegations and pretences held out for interrupting the negociation were affected and unreal. The inſtructions he ſaid from his ſovereign to her commiſſioners, were to negociate and to conclude, and not to trifle; and they would not, by any means, conſent to protract by artificial delays, a treaty, which the Queen of England, if her intentions were ſincere and right, could immediately terminate upon reaſonable and honourable terms. His ſpeech and his demeanour, he acknowledged, were ſharp and warm; and he beſought them to excuſe him, ſince having been made an inſtrument to abuſe his miſtreſs with falſe hopes, he could not but reſent the indignity, and expreſs what he knew, and what he felt *. The Engliſh deputies, addreſſing him and his colleagues, obſerved, with an unſhaken phlegm, that as the friends of Mary, and thoſe of the King her ſon, could not agree, and as their Queen was refuſed the aſſurance ſhe expected, they held their commiſſion to be at an end, and were no longer at liberty to negociate †.

The agitated and unhappy condition of the two Queens.

The inſincerity of Elizabeth, and the failure of the league or accord, filled Mary with reſentment and complaints. Her animoſities, and thoſe of Elizabeth, were increaſed and fortified. She was in haſte to communicate to her allies the unworthy treatment ſhe had received; and ſhe ſent her commands to her adherents in Scotland, to riſe up in arms, to repoſe no truſt in truces which were prejudicial and treacherous, and to employ all their reſources and ſtrength in the humiliation of the

* Leſly, Negociations, p. 138, 139. † Camden, p. 432.

Regent

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Regent and his faction. Elizabeth, who, by this time, apprehended no enterprize or danger from Charles IX. or the duke of Alva, reſolved, on the other hand, to give a ſtrong and effectual ſupport to the King's friends, and to diſunite by ſtratagem, and oppreſs by power, the partizans of the Scottiſh princeſs. The zeal of the biſhop of Roſs having raiſed her anger, ſhe commanded him to depart from London; and Mary, in contempt of her mandate, ordered him to remain there under the privilege of her ambaſſador. The high and unbroken ſpirit of the Scottiſh Queen, in the midſt of her misfortunes, never once awakened the generous admiration of Elizabeth. While it uniformly inflamed her rage, it ſeems alſo to have excited her terror. With a puſillanimous meanneſs, ſhe ſent a diſpatch to the earl of Shrewſbury, inſtructing him to keep his charge in the cloſeſt confinement, and to be inceſſantly on his guard to prevent her eſcape. He obeyed, and regretted her ſeverity. The expence, retinue, and domeſtics of the Queen of Scots, were diminiſhed and reduced, and every probable means by which ſhe might act to accompliſh her liberty were removed from her. The rigours, however, that invaded her perſon, could not reach her mind; and ſhe pitied the tyrant that could add contumely to oppreſſion, and deny her even the comforts of a priſon *.

The legation of Thomas Buchanan to the court of Denmark.

The earl of Lennox, yielding to reſentments which were natural, was impreſſed with the deſire of employing his conſequence to procure from the King of Denmark the ſurrender of Bothwel, or to prevail with this prince to puniſh him for his crimes. With theſe views, he, upon his entry to the Regency, diſpatched Thomas Buchanan as his ambaſſador to the Dane. Elizabeth intereſt-

* Haynes, p. 624. Camden, p. 432.

ed

ed herſelf in his behalf; and while ſhe interpoſed by letters to advance his importance with the Daniſh monarch, ſhe was actuated by ſelfiſh and inſidious motives. Buchanan was not deficient in ability and addreſs; and it was not long before he ſent a letter to the Regent, giving an account of his progreſs in the negociation. This letter, in conſequence of management, or by accident, being delivered to the earl of Morton, at that time in England, as one of the deputies for the King, he found it to abound in matters which were dangerous to the adverſaries of Mary; and ſuppreſſing theſe, he communicated a fabricated copy of it to Elizabeth*. To the Regent, after a conſiderable delay, he ſent the original diſpatch by a ſpecial meſſenger; and it ſerved to give them a diſtaſte of one another. But, as it has never been found, nothing certain is known of its communications; and it can only be conjectured, that the diſcoveries of this envoy were favourable to the Queen of Scots, and hoſtile to her enemies. Though this letter, however, has been loſt, the formal return to the Regent, by the king of Denmark, is ſtill extant†. It is framed with a delicacy that was diſpoſed not to offend, and which betrays more than it reveals. When the miniſters of the Dane examined Bothwel, he proteſted his integrity, appealed to the trial he had already ſuſtained, and expreſſed his willingneſs to ſubmit to a new one, either in Scotland, or in Denmark. He appears alſo to have opened up many important circumſtances in the murder of the lord Darnley, which giving an alarm to the Daniſh monarch, admoniſhed him to act with circumſpection. If he ſhould proceed to execute Bothwel,

* Goodal, vol. ii. p. 382.

† This important and curious record is preſerved ap. State Papers, vol. A. p. 470.

upon

Book V. 1571. upon ſtrong affirmations of his guilt in connection with the Queen, he might juſtly expoſe himſelf to her keen reſentment and indignation, in the event of her remounting the Scottiſh throne. If he ſhould inquire legally into his crimes, it might happen that tranſactions might be brought forward, that would prove moſt offenſive to Elizabeth, and the Scottiſh nobles of her faction; and if he ſhould take the violent ſtep of ſending him a priſoner to Scotland, without ſeeing any proofs of his criminality, he would violate the rights of juſtice and of nations. He accordingly declared to the Regent, that while he was ſolicitous to gratify his deſires, he was averſe from an unconditional ſurrender of Bothwel, and from puniſhing as a vile offender, a perſon of high rank, who pleaded the acquittal of his peers, and who freely offered to vindicate himſelf in a new ſuit or judgment. His ſervices, therefore, he held out as in the command of the Regent, if a ſecurity ſhould be given to him by Elizabeth, and by the Scottiſh nobility, that a fair and legal inquiry ſhould be made into the guilt of Bothwel, and that the ſurrender of this nobleman ſhould never operate to the prejudice of the royal family of Denmark. This conduct was politic and honourable. It correſponded not, however, with the intentions of Elizabeth, and the earl of Morton, to act under the ſanction and ſecurity demanded by the Dane. They therefore prevented any farther applications to him; and repreſſed and overpowered the zeal of the earl of Lennox. It is yet moſt evident and clear, that if Elizabeth had been convinced that Mary was concerned with Bothwel in the murder of her huſband, and if the earl of Morton had been altogether innocent of that foul tranſaction, the invitations of the Daniſh king would have been embraced with the moſt entire

entire cordiality. Their refuſal, accordingly, to direct themſelves by the principles of law, probity, and juſtice, while it is a moſt ſtriking evidence of the honour of Mary, is an illuſtration proportionably ſtrong againſt her adverſaries; and thus the guilt of his aſſociates ſerved a ſecond time to protect the life of the earl of Bothwel.

The revival of hoſtilities between the Scottiſh factions.

By the intrigues of Randolph, in the mean time, the ferments of Scotland were driven to a moſt ruinous extremity; and he boaſted openly in his diſpatches to the Engliſh courtiers, that he had kindled a fire which would not eaſily be extinguiſhed. The two factions delighted in giving frequent annoyance to each other; and rival and hoſtile families indulging their private reſentments, augmented the national calamities. The lord Semple had poſſeſſed himſelf of the houſe of Paiſley, and being expelled from it by the lord Claud Hamilton, a garriſon was placed in it for its defence. The Regent, gratifying his hatred to the family of Hamilton, marched to it with a body of troops; and taking it, conveyed the garriſon to Edinburgh, and ordered them to be executed. The inſtigations of Randolph ſtimulated the inſolence of his paſſions; and during the continuance of the conferences in England for the treaty, Elizabeth had privately aſſured him, that ſhe had come to the reſolution never to ſet the Scottiſh princeſs at liberty, and never to ſuffer her to be reſtored to her kingdom *. Inſpirited by this intelligence, he ſchemed more important atchievements; and before it was known in Scotland, that the colluſion of the Engliſh Queen with the earl of Morton and his colleagues, had actually defeated the negociation with the deputies of Mary, orders were given to captain Crawford to

* Strype, Annals of the Reformation, vol. ii. p. 76.

make

Book V. 1571. make an attempt upon Dunbarton caſtle. This attempt being conducted with ſkill and courage, was ſucceſsful. One Robertſon, who had deſerted from the caſtle, and who was forward to betray the friends he had forſaken, aſſiſted in the enterprize. Captain Crawford marching from Glaſgow in the night, reached it before day; and applying ſcaling ladders to the high rock upon which it is ſituated, was able, after encountering many difficulties, to effect the introduction of his troops. The centinels were put to death, and the aſſailants poſſeſſed themſelves of the cannon and the magazines. When the garriſon took the alarm, they could make no reſiſtance, and their conſternation and ſubmiſſion were nearly in the ſame moment*.

The archbiſhop of St. Andrews is put to death.

This exploit would have been completely fortunate, if the lord Fleming, the governor of the caſtle, had not effected his eſcape. His lady, however, and the archbiſhop of St. Andrews, were among the priſoners. The former was treated with a due reſpect, and allowed to depart with her plate, jewels, and property; but the latter was expoſed to the reſentment of the Regent. He was ſent to Stirling, and charged with being acceſſory to the murder of the late King, and to that of the earl of Murray. A prieſt was called to convict him of the firſt head of the accuſation; and affirmed, that one of the ſervants of the archbiſhop confeſſed to him upon his death, that by his maſter's command, he had been preſent at the murder of the King. The archbiſhop proteſted his innocence, rebuked the prieſt for revealing confeſſions, and aſſerted that no man's confeſſion could make him guilty. When the queſtion was put to him about the aſſaſſination of the earl of

* Buchanan, Hiſt. Rer. Scot. lib. xx. Crawfurd, Memoirs, p. 170.

Murray,

Murray, it is ſaid, he acknowledged himſelf to have been privy to it, and expreſſed a contrition for not having prevented it. The evidence of his guilt appears not, however, to have been ſatisfactory; and it is certain, that his trial was informal. He begged to be put legally to the knowledge of a jury, and obtained not that juſtice. The Regent was impatient to execute him, leſt he ſhould be able to vindicate himſelf, and leſt any powerful application ſhould be made for his life. But his condemnation was not founded upon the crimes imputed to him. A ſentence of forfeiture had been paſſed againſt him in one of the pretended parliaments of the earl of Murray; and it was by this authority that he ſuffered. He was led out to the gallows; and it is remarked of him, that he was the firſt Scottiſh biſhop who died by that ignominious puniſhment. To the Regent he was particularly obnoxious, as being the chief ſupport of the greatneſs of the Houſe of Hamilton. His abilities deſerve commendation; and he was formidable by his application to affairs, and his activity. The habits of his profeſſion, however, had not improved his probity or his morals. In his public character, he was reſtleſs, ambitious, and turbulent; and in private life he was expoſed to the imputation of profaneneſs and gallantry. His adherence to popery, and his licentiouſneſs rendered him infinitely impopular; and the complexion of the times did not permit his fate to be ſufficiently regretted. Men forgot that his death having no ſanction from the laws, was an enormous and unpardonable ſtretch of authority *.

The Queen's friends, inflamed by the hoſtilities of the Regent, and the perfidiouſneſs of Elizabeth, were convinced that their ſwords were

* Spotſwood, p. 252. Camden, p. 432.

their

Book V.

1571. The adherents of the Queen poſſeſs themſelves of Edinburgh, and proclaim the Regent to be an uſurper.

their only dependence. The Duke of Chatellerault haſtened to Edinburgh with three hundred horſe, and one hundred foot. The caſtle was ſtill kept for the Queen by Kircaldy of Grange; who had ſupplied it with men and ammunition; and who, as an awe upon the inhabitants, whom he knew to be governed by the clergy had planted cannon on the ſteeple of St. Giles. The earls of Huntley and Argyle, the lords Boyd and Herries, attended by followers in arms, entered the capital. A proclamation was iſſued, declaring the Regent to be an uſurper, and prohibiting the people from obeying him; and as it was his intention to convene a parliament, the public records were ſeized, and his adherents were commanded to leave the town within the ſpace of ſix hours. An order was ſent to the miniſters, inſtructing them to pray publickly for the Queen; and John Knox and other diſcontented paſtors being unwilling to comply with this injunction, ſought for ſafety in flight*.

The Regent holds a parliament.

14th May.

Leith had been fortified by the earl of Morton; and the Regent having a force ſuperior to that of his adverſaries, was reſolved to aſſemble the three Eſtates. Accordingly upon the day appointed for their convention, they met in the Cannongate, which is ſituated within the juriſdiction of the town†. The ordnance of the caſtle annoyed them, but did not interrupt their proceedings. An attainder was paſſed againſt Maitland of Lethington, as being a party to the King's murder; and his brother John Maitland, prior of

* Leſly, Negociations, p. 243. Spotſwood, p. 252.

† There were preſent the earls of Morton, Marre, Glencairn, Crawfurd, Buchan, and Menteith, the lords Keith and Graham as proxies for their fathers, the earls of Mariſhal and Montroſe, with the lords Lindſay, Ruthven, Glammis, Yeſter, Methven, Ochiltree, and Cathcart, two biſhops, nine abbots and priors, with twenty commiſſioners of boroughs. Spotſwood, p. 253.

Cold-

Coldingham, with Gavin Hamilton, abbot of Kilwynning, and other perſons were forfeited as rebels againſt the ruling powers. The parliament was then prorogued till the 30th day of Auguſt *. Book V. 1571. Scotland is involved in the miſeries of civil war.

Theſe forfeitures ſpoke expreſſively to the feelings of the Queen's friends; and the flames of civil diſcord pervaded the kingdom. Individuals of every deſcription ranged themſelves on the ſide of the King, or of the Queen, and took a ſhare in the hoſtilities of their country. The objects of peace, labour, and induſtry, were forgotten amidſt the noiſe of political contention, and the din of arms. Fathers divided againſt their ſons, and ſons againſt their fathers. Nor were conſiderations of intereſt and policy the only motives that inſtigated the paſſions of the nation. The friends of the King affected to be alarmed for the proteſtant doctrines, and induſtriouſly circulated the opinion that the adherents of the Queen were reſolved to re-eſtabliſh the authority of the pope. The incurable bitterneſs and frenzy of ſuperſtition extinguiſhed alike the ſuggeſtions of reaſon, and the ſenſibilities of nature; and in every town and in every village ſociety was deformed with deeds of outrage and ferocity †.

Machinations of the earl of Morton.

It was in the neighbourhood of the capital that the nobles and the two factions exerciſed their reſentments, and tried their ſtrength in continual hoſtilities. There were many petty and unimportant conflicts. The earl of Morton and Randolph had the direction of affairs upon the part of the Regent; and the former, ever attentive to gratify his avarice, had procured to himſelf the revenues of the archbiſhopric of St. Andrews.

* Spotſwood, p. 253. † Crawfurd, Memoirs, p. 181. Spotſwood, p. 253.

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To his adherents he pointed out the eſtates of the Queen's friends; and the hope of riches and ſpoil kept them together. He felt not, however, his force to increaſe; and he was aſſiduous to allure Elizabeth to aſſiſt the Regent openly with her troops, or to co-operate with him in deceiving his adverſaries by artificial intrigues. By the order of the Engliſh Queen, Sir William Drury, the marſhal of Berwick, marched a body of troops towards Edinburgh; but in conformity with her uſual policy of preſerving the ferments of Scotland, and of weakening the contending factions, this officer was inſtructed to abſtain from depredation and battle, unleſs the affairs of the Regent were ſo deſperate as abſolutely to require his aid. His preſence, however, communicated ſpirit and courage to the King's friends; and, affecting to reconcile the differences of the rival nobles, he opened a negociation, of which it was the purpoſe to gain the caſtle and the town to the Regent. But his addreſs, though aſſiſted by the arts of the earl of Morton and Randolph, was unavailing; and the Queen's friends, inſtead of allowing themſelves to be diſunited or over-reached, became the firmer and the more reſolute to protect her rights, and the independency of their nation *.

The Queen's friends hold a parliament. 12th June.

In the courſe of the national troubles it had been often obſerved, that the acting under the authority of a parliament was infinitely flattering to the people. The adherents of Mary, therefore, finding themſelves piqued to make a parade of their conſequence in the preſent juncture, and being unable to overpower their opponents, it was judged an expedient meaſure to adopt this method of courting popularity, and of recom-

* Melvil, Memoirs, p. 220, 226. Spotſwood, p. 254.

mending

mending the cauſe in which they were embarked. They aſſembled accordingly in the town-houſe of Edinburgh, as a convention of the three Eſtates. A ſchedule was preſented to them complaining of the reſignation of the crown by the Queen of Scots as a forced and invalid act, deſcribing the folly of the pretence of her inability to govern, and contraſting with her real talents for affairs, the weakneſs of her ſon in the cradle, and the feeble underſtanding of the earl of Lennox. Upon the foundation of this inſtrument an expreſs ordination or ſtatute was paſſed, which pronounced the reſignation of the crown to her ſon, and his coronation to be the tyrannical and inſolent deeds of rebels; which branded with the name of uſurpations the regencies of the earls of Murray and Lennox; which declared all their tranſactions to be void, and of no legal efficacy; and which counſelled the people to acknowledge Mary as their proper and only ſovereign. By another ordination they refuted the calumnies which charged them with popery, confirmed in the ſtrongeſt terms the proteſtant eſtabliſhment, and avowed themſelves to be its champions. Theſe acts or ſtatutes were publicly proclaimed by an herald; and emulating the ardour of the King's friends, they agreed that a new meeting of the Eſtates ſhould be celebrated in the month of Auguſt *.

The earl of Morton performs a treacherous exploit.

The arrival of Sir William Drury had ſuſpended the hoſtilities of the two factions; but his mediation and intrigues being fruitleſs, he prepared to march back to Berwick. The Queen's nobles propoſed to do him the honour to attend him a part of the way. The earl of Morton, whoſe chief ſtation was at Leith, led out

* Spotſwood, p. 255.

Book V. 1571. his companies to meet them as they ſhould paſs the village of Reſtalrig. His troops appeared to be in the order of battle; and Sir William Drury diſcovering ſurprize and concern, interpoſed to prevent the effuſion of blood. By his interceſſion he prevailed with both parties to conſent to retire reſpectively to their poſts; and in compliance with the point of honour, it was ſtipulated, that upon a ſignal from him, they ſhould begin to march at the ſame inſtant. His ſignal was given; and the Queen's friends having wheeled about, put themſelves in motion. The earl of Morton, however, while they were returning careleſsly upon their ſteps, diſregarding the agreement, ordered his ſoldiers to attack their rear. The charge was as vigorous as it was unexpected; and the loyaliſts being thrown into confuſion, were keenly purſued to the gates of the capital. This ignominious attack obtained the appellation of Drury's peace, and was ſuppoſed to have been concerted by him with the earl of Morton. The abbot of Kilwynning, a man of ability and moderation, unfortunately periſhed in it. The lord Hume, with above one hundred perſons, were obliged to ſurrender themſelves priſoners; and fifty ſoldiers, diſdaining to ſubmit, died with their ſwords in their hands*.

A ſupply of money and arms arrives from France. July.

New and frequent ſkirmiſhes of various ſucceſs gave employment to both factions; and it was the purpoſe of the earl of Morton to harraſs and fatigue his adverſaries by continual alarms, to intercept proviſions from the city, and to ſtarve Kircaldy and his garriſon into a ſubmiſſion. In this ſtate of affairs a veſſel from France appeared in the Forth with eighteen thouſand crowns, and a ſupply of arms and ammunition, under the care

* Crawfurd, Memoirs, p. 192. Spotſwood, p. 255.

of

of Monſieur Verac and one Chiſſolm, an agent of the Queen of Scots. The rebels, intent to ſeize every advantage, made a capture of it. But it was immediately retaken by the fortunate activity of Sir David Spence; and this treaſure and aid, by relieving the neceſſities of the loyaliſts, ſerved to encourage their hopes, and to fortify them in their duty *. Book V. 1571.

The duplicity of Elizabeth.

That ſhe might make a parade to France of her pacific diſpoſitions towards the Scots, Elizabeth now diſpatched inſtructions to Sir William Drury to preſent a formal offer to the two factions of her endeavours to reconcile them. With this view ſhe expreſſed a deſire to ſend commiſſioners to the borders; and a ſafe-conduct was lodged with Kircaldy, for the deputies who might be appointed on the part of the Queen's friends. An exception, however, was made by her againſt his employing on this occaſion the ſervices of Maitland of Lethington, or of any perſon ſuppoſed to have a concern in the King's murder. Kircaldy diſliking this inſult to Maitland, whom he eſteemed, ſuſpicious of her ſincerity, or elated with expectations from France, paid no attention to her overture; and the Regent, inſtructed by Randolph, informed her that, while his adverſaries were poſſeſſed of the caſtle of Edinburgh, it would be a prejudice to the King's affairs to negociate an accommodation †.

The two factions aſſemble parliaments.

The loyaliſts forgot not to aſſemble the parliament they had indicted. In a convention at Edinburgh, in which two biſhops and three nobles were the only perſons who had parliamentary qualifications, the Regent and two hundred of his adherents were forfeited. The oppoſite party aſſembling their parliament at Stirling, exhibited

August.

* Buchanan, Hiſt. Rer. Scot. lib. xx. † Spotſwood, p. 256.

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1571. an appearance that was more impoſing and reſpectable. The earls of Argyle, Caſſilis, and Eglinton, with the lord Boyd, being convinced that Elizabeth would never ſet their ſovereign at liberty, had abandoned her cauſe as deſperate, and had made their peace with the earl of Morton. In the ardour of their zeal for their new confederates, they accompanied them to Stirling. The young King was alſo there; and upon the opening of their convention he was carried to the ſenate-houſe. For this ſolemnity the infant potentate had been cautiouſly prepared; and he repeated his firſt ſpeech amidſt the applauſes of his courtiers. His extemporary eloquence, however, affected them more than the leſſon he had been taught; for having obſerved an aperture in the cieling, he called out that there was a hole in the parliament. His expreſſion in a guilty and religious age attracting notice, was conſidered as ominous; and the tragical death of the Regent, which happened ſoon after, afforded an interpretation of it that was devoutly adopted by the vulgar of every condition *. This inſipid pageantry and this harmleſs remark were ſucceeded by acts of a reſolute courage and policy. They pronounced the ſentence of forfeiture againſt the duke of Chatellerault, his two ſons, the earl of Huntley, Kircaldy of Grange, and other perſons of diſtinction who adhered to the Queen. They appointed the earls of Morton, Marre, and Glencairn, the lords Semple, Ruthven, and Glammis, the biſhop of Orkney, the abbots of Dunfermling and Inchcolm, Sir John Ballendine, and Mr. James Macgill, to be a council in a body, or

* "The event, ſays archbiſhop Spotſwood, made the ſpeech "the more remarkable, for before the parliament was at an "end, a great hole was made in it by the death of him that "began the ſame." p. 257.

by

by four, three, or two of their number, for the purpoſe of repairing to Elizabeth, to conſult with her upon the affairs of Scotland; and they were meditating other exertions of authority, when an operation of their adverſaries threw them into infinite perplexity and alarm *.

A memorable enterprize of the Queen's faction.

Kircaldy having received intelligence that the Regent and his aſſociates were living at Stirling in profound ſecurity, formed the deſign of diſturbing their ſchemes of ambition. He propoſed to come upon them by ſurprize, and to make them priſoners. His project met the warm approbation of the council, to whom he propoſed it; but they would not permit him to leave the care of his caſtle, and to hazard his own perſon in its execution. The earl of Huntley, lord Claud Hamilton, and Scot of Buccleugh undertook the enterprize. They put themſelves at the head of four hundred men, and keeping ſecret their intention, proceeded expeditiouſly to Stirling. No watch was kept in the town; and at four o'clock in the morning they entered it without oppoſition. Parties were immediately detached to the lodgings of the nobles to take them into cuſtody. The earl of Morton endeavoured to act in his defence; but fire being communicated to his houſe, he was happy to ſurrender himſelf. The domeſtics of the Regent made no reſiſtance. The earls of Argyle, Glencairn, Eglinton, Caſſilis, Montroſe, and Buchan, with the lords Semple, Cathcart, and Ochiltree, were alſo under the neceſſity of yielding themſelves to the aſſailants. All theſe important priſoners were mounted behind horſemen, in order to be carried to Edinburgh; and in this critical moment the earl of Marre ſallied with a party from Stirling

4th Sept.

* Crawfurd, Memoirs, p. 202.

Book V. 1571. caſtle. His charge was impetuous; and the inhabitants of the town flying to arms, joined themſelves to him. The earl of Huntley and the lord Claud Hamilton had not attended ſufficiently to preſerve order among their troops. The greateſt number of them had left their ranks, and were employed in plundering the houſes of the citizens. "Think on God, the Queen, and "the archbiſhop of St. Andrews," was the word or expreſſion by which the loyaliſts were to diſtinguiſh one another. The memory of the cruelty which the Regent had exerciſed upon the archbiſhop was thus awakened; and though Kircaldy had given injunctions to ſave him, he was yet beſet by Captain Calder, and mortally wounded. This ferocious inhumanity was imputed to a principle of revenge in the lord Claud Hamilton. The other nobles who had been taken, found little difficulty in diſengaging themſelves from their keepers. The rout ſoon became general; and as there were five hundred ſoldiers ſtationed in the town, the earl of Huntley and his officers were in haſte to collect their followers, and to ſeek for ſafety by flight. Their enraged adverſaries would inſtantly have purſued them; but the retainers of Scot of Buccleugh upon entering the town, had given way to their predatory habits, and emptying all the ſtables, had eſcaped with their booty. The failure of this enterprize was an infinite vexation to Kircaldy. His hope of ſucceſs had been ſanguine, and would have been completely gratified, if he had gone himſelf to execute his project. From the captivity of ſo many nobles there might have been derived the moſt laſting emolument to his ſovereign, and to his country. His heart glowed with the moſt honourable and diſintereſted patriotiſm; and in ſo commanding a ſituation, the genius

nius of Maitland would have directed him to the views that were moſt worthy of it *.

1571. The death and character of the Regent.

The Regent ſurvived his wound during two days, and expired in the caſtle of Stirling. His death altered not the ſtate of the national affairs; and at this buſy period he was ſoon forgotten. He had experienced remarkable viciſſitudes of fortune; but they had not conducted him to wiſdom. A fine figure and a graceful demeanor gave him an intereſt which he could not improve by converſation and addreſs. His paſſions had always been impetuous, and adverſity had rendered them ungovernable. His integrity was greater than his underſtanding; and he was unſteady as much from the want of policy and knowledge, as from the keenneſs of the preſent appetite. His errors were leſs the fruits of deſign than of temerity and raſhneſs. In the gentle and happy occupations of private intercourſe he might have lived with innocence and cordiality, and have intitled himſelf to applauſe; but in the perilous buſtle of public life, he was hurtful to his country and to himſelf. Diſappointments and affliction having diſguſted him with the world, his dying ſcene was full of decorum, and had even a ſtrain of magnanimity. He deſired to ſee the nobles of his faction. They ſurrounded his couch; and he informed them that he conſidered the grave as a harbour againſt ſtorms and calamities, and that he reſigned himſelf with chearfulneſs to the will of heaven, which called him to exchange trouble and turmoil for tranquillity and peace. He remarked the agitated ſtate of his nation; and reminding them of the helpleſs age of his grandſon, entreated them to

* Melvil, Memoirs, p. 226. 228. Spotſwood, p. 257. Crawfurd, Memoirs, p. 206.

perſevere

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perſevere in his ſupport. He then ſpoke to the earl of Marre of his private concerns; and preſſing tenderly his hand recommended it to him to comfort and protect his unfortunate wife, the lady Margaret Douglas *.

Proceedings of Elizabeth againſt Mary.

Her treaty for a marriage with the duke of Anjou.

While Scotland was torn with civil diſſenſions the rival Queens were yielding to their paſſions, and exerciſing themſelves in intrigues. Elizabeth had entered into a treaty with the court of France for her marriage with Henry duke of Anjou. This prince was young, had a good capacity, and was not ſlaviſhly devoted to the Roman Catholic religion. He had a turn for war and enterprize, had ample eſtates, with expectations ſtill greater, and by his means the ſtricteſt alliance might be formed between England and France. It was not eaſy to propoſe a match that was more proper, or more honourable. The advances in it were forward, and the promiſes of ſucceſs were flattering. Articles upon each ſide were held out and examined; and objections were propoſed and adjuſted. The negociations, however, grew into length; and the difference of religion between the two parties, notwithſtanding the moderation of the duke, afforded an obſtacle or pretence upon which the treaty in conformity to the real views of the two courts might be either prolonged, or interrupted. It was not the object of the Engliſh Queen to accompliſh this marriage; and Charles IX. who affected to be zealous for it was equally inſincere. By the policy of tranſacting for a connection with Elizabeth, this inſidious monarch meant to ſeduce the Hugonots into tranquillity and confidence, to avert from him the ſuſpicions of their leaders, and to effectuate ſecurely the

* Crawfurd, p. 208. Spotſwood, p. 257.

terrible

terrible maſſacre which he was meditating. The diſſimulation of Elizabeth, though directed to ends not ſo criminal, was not leſs artificial and profound. By the noiſe of her intended marriage ſhe was anxious to throw diſtraction and diſquietude into the councils of Spain, to repreſs the vigilance of the pope, and to diſcourage the effect of his fulminations; and it was ſtill more earneſtly her deſire, to draw the attention of France from the Queen of Scots, to defeat and deſtroy this general ſource of the hope and power of her partizans, and to prevent in particular the embarkation of the troops and ſuccours which had been promiſed to her upon the event of the failure of the negociations for her re-eſtabliſhment in her kingdom *.

Acts of the Engliſh parliament.

The eager jealouſies and reſentments of Elizabeth had alſo diſcovered themſelves in the proceedings of the Engliſh parliament. It paſſed into an ordinance, that if any perſon ſhould attempt the hurt or death of the Queen, or raiſe war againſt her, or incite others to hoſtility, he ſhould be guilty of treaſon; and that the penalties of this crime ſhould likewiſe be incurred by all thoſe who ſhould diſpute her claim to her realm, affirm that her dominions belonged to another, give her the appellation of heretic or infidel, uſurp her title to her kingdom during her life, or pretend that the laws and ſtatutes could not limit and determine the rights and ſucceſſion of the crown. It was declared, that if any perſon, during her life, ſhould maintain by a book written or printed, that there exiſted an individual who was or ought to be her heir and ſucceſſor, except the natural iſſue of her body, he ſhould

* Sir Dudley Diggs, Complete Ambaſſador, p. 83. 97. 106. Camden, p. 433. Daniel, Hiſt. de France, tome v.

for

Book V. 1571. for the firſt offence be confined in a dungeon for a twelve month, and forfeit the one half of his goods; and for the ſecond, loſe the remainder of his eſtate, and incur the puniſhment of perpetual impriſonment. Theſe laws were obviouſly intended to afford an efficacious check to the intrigues of Mary and her adherents; and as the biſhop of Roſs had lately publiſhed his defence of the honour of his miſtreſs *, Elizabeth was earneſt

* Biſhop Leſly's defence of Queen Mary was printed firſt with great ſecrecy, and without any name, at London in the year 1569. In the year 1571, it was re-printed at Liege, with alterations, and under the name of Morgan Phillipes batchelor of divinity. Anderſon, Collections, vol. i. The miniſtry of Elizabeth were infinitely ſolicitous to ſuppreſs this work, which, though it bears the marks of party, is argumentative and eloquent. Murdin, p. 2. 4. It is remarkable, that no anſwer was made to it, by any of the partizans of Elizabeth, or by the adherents of Murray and Morton.

There is a diſpatch from a ſtateſman of penetrating and elegant talents to Sir Philip Sidney which, I imagine has a reference to Leſly's defence; and it contains a paſſage that is very curious from the time in which it was written, and that paints ſtrongly though indirectly the perſecuting and inclement ſpirit of the adverſaries of the Scottiſh Queen.

"Liber Anglicus, quem mihi hic oſtendiſti, converſus eſt "in linguam Gallicam; cui etiam plura ſunt addita à quodam, "qui conatur diluere crimina de quibus Regina Scotiæ accu- "ſatur. Habui apud me per aliquot dies exemplar, quod puto "miſſum fuiſſe ad imperatorem; cujus bonam partem legi. "Obſecro, mi chariſſime Sydnæe, & obteſtor te, per noſtram "amicitiam, ut caveas ne quis ſciat te ejuſmodi ſcripta apud te "habere. Valde doleo quod tecum non ſim plura de iis rebus "locutus ante tuum diſceſſum; & ob eam cauſam, & alias eo "pertinentes, ita cupio tecum colloqui, ut ſi ullo modo mihi "liceret, ad te ſtatim excurrerem. Crede mihi in monarchiis "virtutem ſæpius eſſe exitio iis qui ſunt illuſtri loco nati, quam "vitium. Ejus rei non eſt opus petere exempla ex veteribus "hiſtoriis, quot enim nobis ſuppeditare poteſt ſolius Henrici "octavi vita; & ut nihil apud te diſſimulem, veſtra gens his "malis videtur fuiſſe maxime obnoxia; ſed eam palmam vobis "jam eripuimus. Sed vereor, ne poſt non multos annos tales "tragœdiæ apud vos in theatrum reducantur, cum ſint qui ma-

"teriam

earneſt to ſtrike a deciſive blow againſt the freedom of private opinion and the liberty of the preſs. Her ſubjects, though accuſtomed to the loftineſs of her prerogative, bore not this inclement ſeverity without complaints and murmurs; and while it was a matter of general wit and pleaſantry to remark the peculiarity of her care for the *natural iſſue* of her body, the ſingular ambiguity of the expreſſion, excited an alarm and ſuſpicion in men of ſagacity and refinement, leſt in the view of the fertility of her connections with the earl of Leiceſter, ſhe ſhould be ſeriouſly inclined to hold out her kingdom as an inheritance to an illicit progeny *. Nor ought it to be forgotten, that at this time in the houſe of commons, the zeal of ſome courtiers againſt the Queen of Scots was ſo intemperate as to induce them to propoſe, that if ſhe ſhould offend againſt the laws of England ſhe ſhould be proſecuted in the form that is preſcribed for proceeding againſt the wife of an Engliſh peer. Elizabeth, however, was not yet prepared for an extremity ſo indecent and ſo criminal, and employed her authority to prevent this motion from paſſing into a law †.

Intrigues of the Queen of Scots.

It correſponded not with the ſpirit or intereſt of the Scottiſh Queen to ſink under her misfortunes, to fold her arms in dejection, and to weep in idleneſs over the cruel arts of her rival. During the dependence of the negociations with Elizabeth for her reſtoration, there had been communicated to her the ſcheme of a conſpiracy for her deliverance, by Robert Ridolphi, a Florentine,

The duke of Norfolk's conſpiracy.

"teriam ad eam rem præparent. Ego oro Deum, ut tua virtus "tibi ac patriæ tuæ ſit ſalutaris. Sed de iis alias." Viennæ, 5 Martij 1574. Huberti Langueti Epiſt. ad Phil. Sidneium, accurante D. Dalrymple de Hailes, Eq. p. 44.

* Camden, p. 436. † Ibid.

who

Book V. 1571. who had lived in London many years as a merchant, and who was ſecretly an agent for the court of Rome. But to his letters, while the fate of the treaty was uncertain, ſhe returned no reply. Its miſcarriage, through the duplicity of Elizabeth, recalled them forcibly to her attention, and ſtimulated her to ſeek the accompliſhment of her liberty by meaſures, bolder and more arduous than any which had been hitherto employed by her. She drew up in cypher an ample diſcourſe of his communications, and of her ſituation, and diſpatched it to the biſhop of Roſs, together with letters for the duke of Norfolk. Her inſtructions to this eccleſiaſtic were to convey the diſcourſe and letters expeditiouſly to Norfolk, and to concert an interview between that nobleman and Ridolphi. The confidential ſervants by whom the duke acted with the biſhop of Roſs were Banniſter and Barker; and having received from them the diſcourſe and the letters, they were decyphered by Hickford his ſecretary. Having conſidered them maturely, he delivered them to Hickford with orders to commit them to the flames. His orders, however, were diſobeyed; and Hickford depoſited them with other papers of conſequence under the mats of the duke's bed-chamber. The contents of the diſcourſe and the letters awakening the hope and ambition of Norfolk, he was impatient to ſee Ridolphi; and the biſhop of Roſs ſoon brought them together. Ridolphi, whoſe ability was inſpirited by motives of religion and intereſt, exerted all his eloquence and addreſs to engage the duke to put himſelf at the head of a rebellion againſt his ſovereign. He repreſented to him that there could not be a ſeaſon more proper than the preſent for atchieving the overthrow of Elizabeth. Many perſons who had enjoyed authority and credit under her predeceſſor were

were full of diſguſts; the Roman Catholics were numerous and angry; the younger ſons of the gentry were languiſhing in poverty and inaction in every quarter of the kingdom; and there were multitudes diſpoſed to inſurrection from reſtleſſneſs, the love of change, and the ardour of enterprize. He inſinuated to him, that his rank, popularity, and fortune enabled him to take the command of ſuch perſons with infinite advantage. He inſiſted upon his impriſonment and the outrages he had ſuſtained from Elizabeth, remarked the contempt to which he would expoſe himſelf by a tame ſubmiſſion to wrongs, extolled the propriety with which he might give way to his indignation and revenge, and painted out the glory he might purchaſe by the humiliation of his enemies, and by the full accompliſhment of his marriage with the Queen of Scots. To give a ſtrength and confirmation to theſe topics he produced a long liſt of the names of noblemen and gentlemen with whom he had practiſed, and whom he affirmed to be ready to hazard their lives and riches for a revolution in the ſtate, if the duke would enter into it with cordiality. To fix deciſively the duke, he now opened to him the expectations with which he might flatter himſelf from abroad. The pope, he aſſured him, had already provided one hundred thouſand crowns for the enterprize; and if popery ſhould be advanced in England, he would chearfully defray the whole charges of the war. The King of Spain would ſupply four thouſand horſe and ſix thouſand foot, which might be landed at Harwich. Charles IX. was devotedly attached to the Queen of Scots, notwithſtanding the treaty which had been entered upon with Elizabeth for her marriage with his brother the duke of Anjou; and when he ſhould diſcover that on the part of the Engliſh princeſs, this

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this matrimonial ſcheme was no better than a device or a mockery, he would renounce the appearance of friendſhip he had aſſumed, and return to his natural ſentiments of diſdain and hatred, with an added outrage and diſcontent. In fine, he urged, that while he might depend on the aſſiſtance and arms of the greateſt princes of Chriſtendom, he would intitle himſelf to the admiration of all of them by his magnanimous efforts, and generous gallantry in the cauſe of a Queen ſo beautiful, and ſo unfortunate *.

It is diſcovered by the miniſters of Elizabeth.

The Duke of Norfolk, allured by appearances ſo plauſible and flattering, did not ſcruple to forget the duties of a ſubject, and the ſubmiſſive obligation in which he had bound himſelf to Elizabeth never more to interfere in the affairs of the Scottiſh princeſs. Ridolphi, in this forward ſtate of the buſineſs, adviſed him to addreſs letters to the pope, the king of Spain, and the duke of Alva, expreſſive of his concurrence in the deſign, and inſpiriting their activity and reſolutions. He even produced diſpatches framed for this purpoſe; and while he entreated the duke to ſubſcribe them, he offered to carry them himſelf to Flanders, Rome, and Spain. The duke of Norfolk, who was ambitious and timid, diſpoſed to treaſon and unfit for it, heſitated whether he ſhould ſubſcribe the letters, and at length refuſed to proceed to that extremity. He yet allowed the biſhop of Roſs, and Barker his ſervant, to go to the Spaniſh ambaſſador † to expreſs his approbation of the meaſures of Ridolphi, to acknowledge that the letters were according to his mind, and to empower this ſtateſman to certify their authenticity to his court ‡. Ridolphi, full of hopes, ſet

* Camden, p. 432. Leſly, Negociations, p. 150. 158.

† Don Jean Gerard de Speſi.

‡ Murdin, p. 123.

out

out to execute his commiſſion. He paſſed firſt to the duke of Alva, to whom he communicated the tranſactions in which he had been engaged, and with whom he held many conferences. There was at this time at Bruxelles Charles Bailly, a ſervant of the Queen of Scots; and Ridolphi, after diſcloſing to him his proceedings with Alva, entruſted him with letters to her, to the duke of Norfolk, the Spaniſh ambaſſador, and the biſhop of Roſs. When this meſſenger reached Calais a letter was delivered to him from the biſhop of Roſs deſiring him to leave his diſpatches with the governor of that place. From inexperience and vanity he neglected this notice; and being ſearched at Dover, his letters, books, and cloaths were ſeized, and he himſelf was ſent to London and impriſoned in the Marſhalſea. The biſhop of Roſs full of apprehenſions applied to lord Cobham, the warden of the Cinque Ports, who was friendly to the duke of Norfolk; and obtaining by his means the packet of diſpatches from Ridolphi, he ſubſtituted another in its place which contained letters of no danger or uſefulneſs. He had alſo the dexterity to convey intelligence of this trick to Bailly, and to admoniſh him to preſerve a profound ſilence, and not to be afraid. This ſimple and unpractiſed agent had, however, excited ſuſpicions by the ſymptoms of terror he had exhibited upon being taken; and by exclaiming that the diſpatches he brought would involve his own deſtruction, and that of others. At his firſt examination he confeſſed nothing; but being ſent to the Tower and put upon the rack, he revealed his converſations with Ridolphi, and declared, that the diſpatches which he had brought had been delivered to the biſhop of Roſs. An order was granted for taking the biſhop into cuſtody. Having been aware, however, of his

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perilous ſituation, his houſe was ſearched in vain for treaſonable papers; and he thought to ſcreen himſelf from anſwering any interrogatories under the ſanctity of his character as the ambaſſador of an independent princeſs *.

The friends and ſervants of the duke of Norfolk give evidence againſt him.

An unexpected incident excited, in the mean while, new ſuſpicions and alarms. Mary being deſirous of tranſmitting the ſum of two thouſand crowns to the lord Herries to advance her intereſts in Scotland, the duke of Norfolk undertook to convey it to him with ſafety. He entruſted it to the charge of his conſidents Hickford and Barker, who putting it into a bag with diſpatches from their maſter to lord Herries, ordered a ſervant called Brown to carry it to Banniſter, who being at this time on the border, could forward it to Scotland. Brown, ſuſpicious, or corrupted, inſtead of proceeding on his errand, carried the bag and its contents to Sir William Cecil, now lord Burleigh. The privy council deeming it treaſon to ſend money out of the realm for the uſe of the friends of Mary, whom they affected to conſider as enemies, ordered Hickford and Barker to be apprehended. The rack extorted from them whatſoever they knew to the prejudice of their maſter. Hickford gave intelligence of the fatal diſcourſe and the letters from Mary, which he had preſerved in oppoſition to the orders given to him. All the proceedings between the Queen of Scots, the duke of Norfolk, the biſhop of Roſs, and Ridolphi were brought to light. A guard was placed upon the houſe of the duke of Norfolk, in order to prevent his eſcape. Sir Ralph Sadler, Sir Thomas Smith, Sir Henry Nevil, and Dr. Wilſon were commiſſioned to examine him; and being impreſſed with the belief that the diſcourſe and

* Camden, p. 434. Leſly, Negociations, p. 161. 166. Murdin, p. 9. 12.

the

the letters had been deſtroyed, he poſitively denied that he had any concern in the affairs of the Queen of Scots, or any knowledge of them whatſoever. He was committed to the Tower a cloſe priſoner. Banniſter by this time was taken; and he confirmed the relations of Hickford and Barker. In the courſe of their diſcoveries there appeared reaſons of ſuſpicion againſt many perſons of rank and diſtinction. The earls of Arundel and Southampton, the lord Cobham, Mr. Thomas Cobham his brother, Sir Thomas Stanley, Sir Henry Percy, and other gentlemen who were friendly to the Queen of Scots and the duke of Norfolk, were ordered to be lodged in different priſons; and the rack and the expectation of a pardon drew from them the fulleſt confeſſions. The duke was altogether unable to defend himſelf. The concurring teſtimonies of his friends and ſervants with the diſcourſe and the letters which he fondly imagined had been committed to the flames, were communicated to him. He was overwhelmed with amazement and diſtreſs; and exclaimed that he had been betrayed and was undone. He made ample acknowledgments of his guilt, and had no foundation of hope, but in the mercy of his ſovereign*.

The dangerous condition of biſhop Leſly.

By the confeſſion of the duke himſelf and from all the inquiries which had been made by the miniſters of Elizabeth, it appeared obvious beyond a doubt, that the biſhop of Roſs had been the principal contriver of the conſpiracy. Ridolphi had acted under his direction, and he had inſpirited the duke of Norfolk. He had even proceeded to the extremity of adviſing that nobleman to put himſelf at the head of a ſelect band of adherents, and to ſeize boldly the perſon of Elizabeth. In his examinations he was treated with great rigour

He is compelled to reveal his own practices and thoſe of his Queen and the duke of Norfolk.

* Murdin, p. 67. 175.

Book V. 1571. and inſult. The earl of Bedford ſpeaking as preſident of the committee of the privy council, who were appointed to inquire into his conduct, told him that he was a flagitious practiſer for a pretended Queen, that he was a treacherous Scot, that his dealings againſt their ſovereign and her kingdom were moſt wicked, and that the proofs of his guilt being concluſive and full, he might expect the puniſhment to which he had expoſed himſelf. His ſituation was critical; and he performed his part with ability and ſpirit. He deſired the counſellors of Elizabeth to remember, that he was not a private man, and that he was intitled to all the privileges that belonged to the ambaſſador of an independent prince. He then produced the commiſſion he had received from Mary; and after reminding them that he was alſo under the protection of their miſtreſs, he ſhowed them the ſafe-conduct which had been preſented to him in her name. The lord Burleigh admoniſhed him, that Elizabeth and her council had ſubmitted his caſe to Hewes, Dale, Drury, Aubrey, and Jones, the moſt learned civilians in England; and that it was their judgment, that he might legally be puniſhed for the offences he had committed*. He expreſſed his willingneſs, with the aſſiſtance of counſel, to anſwer whatever theſe lawyers could advance on this head, and to demonſtrate, in oppoſition to them, that the rights of an ambaſſador were inviolable. Elizabeth, he ſaid, might indeed take away his life; but he inſiſted that by this violence ſhe would give a wound to the majeſty of nations; and he wiſhed them to adviſe her not to ſhew him a fouler play than her own ambaſſadors had met with. He then ſet before them the examples of Throgmorton in France, and of Randolph and Tamworth in Scot-

* Murdin, p. 18.

land,

land, who had fomented rebellions, and had yet been puniſhed with no other correction than by an admonition to withdraw themſelves from the courts they had offended. He thus inferred, that the hardeſt lot he could expect, in conſiſtency with juſtice, was a command to retire out of the dominions of their miſtreſs. The lord Burleigh attempted to make a diſtinction between his caſe, and that of the ambaſſadors he had mentioned; and treating what he had ſaid as of no ſolidity, intimated to him that the conſpirators had already confeſſed their guilt; and taking from his pocket a ſchedule of articles, proceeded to queſtion him about his connections with the duke of Norfolk. The biſhop, however, peremptorily refuſed to make any reply to his interrogatories; and took the liberty to obſerve, that as the parties to the conſpiracy had revealed their tranſgreſſions, it was of no conſequence to know what he could advance to their favour, or to their prejudice; ſince the cuſtoms and treaties of the two kingdoms did not admit of the teſtimony of an Engliſhman againſt a Scotſman, nor of a Scotſman againſt an Engliſhman*. The counſellors of Elizabeth were diſturbed with his obſtinacy; and having certified him, that the rack would ſoon render him more pliant, he was ordered into cloſe keeping in a dark apartment of the Tower. When he had remained a few days in this melancholy ſituation four privy counſellors, the lord Admiral, the lord Burleigh, Sir Francis Knollys, and Sir Thomas

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* This barbarous cuſtom was uſeful on the borders of the two kingdoms, where the bitterneſs of hoſtility and revenge gave riſe to it. That it ſhould have grown to be general over the two realms is ſurpriſing. When the lord Dacres, in the reign of Henry VIII. was accuſed of treaſon, his peers acquitted him, becauſe there were no witneſſes of his guilt but Scotſmen. Camden, p. 177.

Book V. 1571. Smith, went to the Tower, and cauſed him to be brought to them to the lieutenant's lodging. After having aſſured him that he was charged by all the priſoners as the principal contriver of the conſpiracy, they inſiſted in the name of their ſovereign that he ſhould explain fully the part he had acted. The confeſſions of the duke of Norfolk and his ſervants, of the lord Lumley, Sir Thomas Stanley, and other gentlemen, with the diſcourſe and diſpatches of the Queen of Scots were ſet before him. They now proteſted upon their honour, that if he would make a free and open declaration of his proceedings it ſhould be neither employed againſt himſelf, nor againſt any other perſon; but that if he ſhould continue to be reſolute in refuſing to give this ſatisfaction to their Queen, who was anxious to ſearch the matter to the bottom, they were inſtructed to let him know, that ſhe would abſolutely conſider him as a private perſon, and order him to be tried and executed as a traitor. In this extremity he accepted the conditions held out to him, and diſcloſed minutely all the tranſactions of the principal parties in the conſpiracy. But while he deſcribed the offences of his miſtreſs, the duke of Norfolk, and himſelf, he could not avoid to detract from their blame by apologies. It was natural, he ſaid, for the Queen of Scots to exert the moſt ſtrenuous endeavours in her power to recover her freedom and crown; and the methods ſhe adopted to operate her purpoſes, ought to be conſidered in connection with the arts of Elizabeth, who pertinaciouſly denied her acceſs to her preſence, who kept her a cloſe priſoner, in contempt of all the principles of humanity and juſtice, and who afforded an open and powerful aſſiſtance to her enemies. The duke of Norfolk he was earneſt to excuſe on the foundation of the advances which had been made in his marriage with

with the Queen of Scots. Their plighted love, and their engagements, did not allow him to forſake her. As for himſelf he was her ambaſſador and her ſervant; and being highly indebted to her generoſity and kindneſs, he could not abandon her in captivity and diſtreſs without incurring the guilt of the moſt ſinful treachery and ingratitude. The daring propoſal he had made to ſeize the perſon of Elizabeth was the point, he obſerved, which ſeemed to preſs upon him the moſt ſeverely; and he entreated them to believe that he had moved it only with the view of trying the courage of the duke of Norfolk. The privy counſellors of Elizabeth were now in poſſeſſion of all the evidence they could expect in this important buſineſs. Norfolk was admoniſhed to prepare for his trial; and biſhop Leſly perceived, that though he might eſcape with his life, he would never more be permitted to reſide in England, and to act there as the ambaſſador, the miniſter, and the friend of the Queen of Scots*.

The earl of Marre is advanced to the Regency.

Scotland in the mean while continued in quietude, and was waſted with hoſtilities. Upon the death of the earl of Lennox, the nobles aſſembled at Stirling came to the reſolution of immediately appointing a ſucceſſor to him. The candidates for the regency were the earls of Argyle, Morton, and Marre. There was no time for the interference of Elizabeth; and Randolph being infinitely obnoxious to both factions, he was little able to promote the claims of the earl of Morton. Argyle was now in the intereſts of the King; and while he was ſuſpected as unſteady, he was an object of envy to nobles who were leſs wealthy and powerful. The earl of Marre had the charge of the King's perſon; was popu-

Military operations.

* Camden, p. 435. Leſly, Negociations, p. 167. 200. Murdin, p. 20. 38. 43. 46. 52. 54. 58. 63.

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lar from the opinion entertained of his honour; and by having defeated the attempt of Huntley and lord Claud Hamilton he had rendered a moſt eſſential ſervice to his party. The plurality of voices declared in his favour; and as he had talents for war, he was in haſte to diſtinguiſh himſelf. He propoſed to lay ſiege to the caſtle of Edinburgh; and carrying with him from Stirling a train of artillery, and having collected a ſufficient ſtrength, he began his operations. But the attack of fortified places not being well underſtood in that age, all his efforts were unavailing; and finding it prudent to retire to Leith, the war degenerated into petty ſkirmiſhes and incurſions, which kept alive the angry and unhappy paſſions of the rival parties, but could lead to no deciſive atchievement*.

The civil war rages in the Northern diſtricts.

Nor was it only in the neighbourhood of Edinburgh that hoſtilities were exerciſed. The earl of Huntley had granted a commiſſion to Sir Adam Gordon, his brother, to be a deputy lieutenant for the Queen, and to give annoyance to her adverſaries. The family of Forbes was hoſtile to the Gordons; and the Regent ſtimulated its patrimonial reſentments. Arthur, brother to lord Forbes, was at the head of a body of men with whom he meant to act for the King, and to gratify the feuds of his houſe; and being attacked by Sir Adam Gordon, he was defeated with conſiderable ſlaughter, and fell himſelf in the field. Lord Forbes aſſembled his clan to revenge this inſult, and the Regent reinforced him with two companies of foot. He marched againſt his enemies; and the two armies meeting near Aberdeen a furious battle was fought, in which the victory was again on the ſide of Sir Adam Gordon. Theſe ſucceſſes, and a few

* Crawfurd, Memoirs, p. 210. Melvil, Memoirs, p. 229.

exploits

exploits of leſs moment, which were alſo favourable to the Queen, excited the joy of her adherents, and filled them with the expectation of more important advantages *.

A defenſive confederacy is formed between England and France.

The defeat of the duke of Norfolk's conſpiracy was however more than a compenſation to the King's friends for any unproſperous appearance in their affairs. It was a blow to Mary which ſhe could never recover. Her moſt faithful friends were languiſhing in priſons upon her account; ſhe had no longer the counſels of the biſhop of Roſs; and the Spaniſh ambaſſador who had entered into her concerns with an unſcrupulous cordiality had been ordered to withdraw from England. The trial and condemnation of Norfolk ſoon followed, and plunged her into the moſt calamitous diſtreſs. The King of France, indeed, continued ſtill to intercede in her behalf; but his applications were careleſs and feeble; and ſhe was altogether unable to penetrate into his purpoſes. It even appeared that his reſpect for her was greatly decayed, and that though the marriage of Elizabeth with the duke of Anjou had been interrupted, he was yet ambitious of the friendſhip of this princeſs. In fact, a league was at length finally concluded between Charles IX. and Elizabeth, in which it was ſtated as the object of theſe powers mutually to aſſiſt one another in the event of attacks from abroad. In this treaty the name of the Queen of Scots was not mentioned; and with regard to Scotland, it was ſtipulated that no innovations ſhould be made in its government; that it ſhould be defended againſt foreigners; and that Elizabeth might chaſtiſe by military force all perſons in it whatſoever who ſhould give harbour and encouragement to rebels from England †.

* Spotſwood, p. 259. † Digges, p. 161. 162. 170. 199. Camden, p. 443.

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But while Charles IX. by this defenſive alliance was openly courting Elizabeth, and doing an injury to Mary, he was yet ſecretly the friend of the Scottiſh princeſs; and when it was ratified he ſhewed a diſpoſition to take an intereſt in her affairs. His ambaſſadors, the duke of Montmorency, Paul de Foix, and Monſieur de Fenelon, while they acknowledged that they had no title from the treaty to negociate any advantages for Mary, yet informed the council of England, that their maſter would be happy to obtain ſome mitigation to the misfortunes of a princeſs who had been the wife of his brother, and was a dowager of France. They, accordingly, entreated in his name, that her retinue and attendance ſhould correſpond with her rank; that they might be permitted to ſupply her with money for her wardrobe and conveniencies; that they might ſend to her a gentleman to pay her a viſit in the name of the king of France, and to inquire into the ſtate of her health; that ſhe might ſometimes have the liberty of leaving her priſon, to take the benefit of a free air; that ſhe might be allowed an ambaſſador at London to take the charge of her affairs; that hoſtilities in Scotland ſhould ceaſe; and that the two factions ſhould appoint deputies to concert a final determination of their differences under the mediation of France and England *. The Engliſh counſellors did not ſcruple to aſſure theſe ambaſſadors that Mary had been treated with greater tenderneſs than ſhe deſerved. A flattering reſpect, notwithſtanding, was paid to their requeſts. They were told that Elizabeth was ſatisfied that Mary ſhould have as many ſervants as conſiſted with her detention in a ſure captivity; that her friends might furniſh her with

* Addit. aux, Mem. de Caſtelnau, ap Jebb, 512, 514. Digges, p. 214, 215.

ſuch

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ſuch ſupplies for the decoration of her perſon and her private expence, as might appear proper and reaſonable to the privy council of England; that ſhe might walk abroad for exerciſe and air attended by the earl of Shrewſbury; and that in the preſence of this nobleman, ſhe might receive a viſit from a gentleman in the name of the King of France. Upon the foundation, however, of her practices with the duke of Norfolk, and the treaſonable behaviour of the biſhop of Roſs, ſhe was refuſed the liberty of having an ambaſſador at the court of London. But with regard to a preſent ceſſation of hoſtilities, and the future ſettlement of the Scottiſh affairs, the Queen of England ſeemed to be no leſs eager than the king of France. Sir William Drury and Du Croc were inſtructed to negociate upon theſe topics with the leaders of the two factions. An abſtinence from war or a truce was even concluded for two months; and expectations went abroad, that by the arbitration of France and England tranquillity and peace would ſoon be firmly eſtabliſhed over Scotland. Elizabeth, however, was, as uſual, inſincere; and by her devices and practices ſhe was foſtering in ſecret the animoſities of the Scottiſh nobles, and involving Mary and her adherents in diſtraction and perplexity *.

Elizabeth tries to inflame her ſubjects againſt Mary, and

In England her policy againſt Mary was more direct and open. The detection of Buchanan was reprinted † and diſperſed at London, in order to

* Spotſwood, p. 263. Crawfurd. p. 233.

† It was printed firſt in the year 1571, by the care of lord Burleigh. And at that time Elizabeth and her miniſters circulated copies of it in France as well as in England. For in a paper of inſtructions to her ambaſſador at Paris, ſhe recommends it to him to give preſents to Charles IX. and his courtiers "of Buchanan's little Latin books;" and the reaſon aſſigned by her for this practice is ſufficiently explicit. "They will ſerve to good effect to diſgrace [the Queen of Scots]; which

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to deſtroy the popularity of the Queen of Scots; and when Monſieur de Fenelon complained of the publication of this infamous libel, it was pretended that the books had been ſent from Scotland or Germany. Her courtiers affected a conſtant apprehenſion of plots againſt her life; and theſe were uniformly imputed to the machinations of Mary. The Houſe of Commons addreſſed her to execute the duke of Norfolk; a petition with which ſhe failed not to comply. A motion was made in it, and a reſolution taken to proceed againſt the Queen of Scots as guilty of high treaſon, and to touch her not only in her life, but in her titles and dignity. The French ambaſſador, however, having remonſtrated with Elizabeth on the ſubject of a zeal ſo wild and eccentric, ſhe ſent a meſſage to her faithful Commons, approving of their kindneſs to her, but adviſing them that ſhe thought it right to defer that buſineſs to a more convenient ſeaſon. It was her deſire to accuſtom her people to conſider her ſafety and that of England to be incompatible with the liberty and the life of the Queen of Scots; and ſhe was looking forward with anxiety to the period when ſhe might throw aſide all reſerve without danger, and conduct this unfortunate Princeſs to the ſcaffold.

ſends commiſſioners to expoſtulate with her.

" which muſt be done before other purpoſes can be attained." Goodal, vol. i. Introd. 25. It is remarkable that lord Burleigh himſelf took the trouble to frame and circulate an anonymous paper to gain credit to the Detection when it was firſt publiſhed. Anderſon, Collect. vol. ii. p. 261. Goodal, vol. ii. p. 375. Theſe were ſhameful devices; and it is to be inferred from them, that if Elizabeth and her miniſter had been poſſeſſed of any real or ſolid evidence to the diſhonour of Mary, they would not have neglected to produce it. The anxious induſtry with which they exerted themſelves to ſuppreſs the defence of the honour of Mary by Biſhop Leſly, is more than a confirmation of this inference.

It

It was with this intention, that before the execution of the duke of Norfolk*, ſhe had empowered William lord de la War, Sir Ralph Sadler, Dr. Wilſon, and Mr. Bromley, ſolicitor general, to go to Mary, and to expoſtulate with her upon her conduct; and a few days after he had ſuffered †, they executed their commiſſion. They found the Queen of Scots under the oppreſſion of a deep ſorrow; a circumſtance which they had foreſeen, and which did not diſcourage them from behaving to her with that inſulting and intemperate demeanour that ſuited the reſentments of their miſtreſs. "You have uſurped, "ſaid they to Mary, the title and arms of the "crown of England, as well during the life of "the French king your huſband, as ſince his "death; and you have not yet expreſſed your "regret for this inſult. You have ſought to ad-"vance theſe unjuſt claims and pretenſions by "ſeeking to join yourſelf in marriage with "the late duke of Norfolk; and you preſſed "this nobleman to employ force to operate this "marriage. You were privy to the rebellion of "the earls of Northumberland and Weſtmore-"land; and you have procured relief to Engliſh "rebels both in Scotland and Flanders. You "have practiſed with the king of Spain, the "pope, and other powers to invade England; "and many ſubjects of England were allured by "you to conſent to join their force to a foreign "aid, to deliver you from captivity, and to de-"clare you Queen of England. Your inſtru-"ment in this buſineſs was Ridolphi, an Italian, "and a ſecret agent for the pope. You have "received letters from the pope, in which he "promiſes to cheriſh you and your adherents as

* Murdin, p. 773. † Camden, p. 442.

"a hen

Book V. "a hen does her chickens, and to eſteem the re-
"bels againſt Elizabeth as the true ſons of the
"church. You have procured from him a ſedi-
"tious Bull againſt your ſiſter; and in fine, you
"have inſtigated your friends, favourers, and
"miniſters beyond the ſeas to affirm and publiſh
"you to be Queen of England *." Mary having firſt admoniſhed them that ſhe was an independent princeſs, replied to their accuſations with a compoſed and majeſtic countenance and air. She told them that ſhe herſelf could not properly be charged with having uſurped the title and arms of England. The court of France, indeed, and the power of her huſband, at a period of her life when ſhe was unacquainted with buſineſs, had impoſed this meaſure upon her as a matter of expediency. It was not right to make her accountable for their actions; and after the death of Francis, ſhe had induſtriouſly abſtained from bearing the title and arms of England. Nor did ſhe deſire to prefer any claim to them while Elizabeth ſhould live, or while there ſhould exiſt any heirs of her body. By matching with the duke of Norfolk, ſhe was ſo far from intending any prejudice to England, that ſhe was convinced it was a meaſure ſalutary to its intereſt and peace. From her connection with him, which was near and tender, ſhe acknowledged that ſhe had been induced to counſel him to find ſome method to free himſelf from the Tower and from danger. She had never, however, excited any rebellion againſt the perſon or rights of Elizabeth; and on different occaſions ſhe had even been diſpoſed to diſcover deſigns to her prejudice, which had been communicated to her, if her ſiſter would have

* Murdin, p. 218.

admitted

admitted her to an audience *. She had indeed recommended by letters the counteſs of Northumberland to the duke of Alva; but ſhe had afforded no relief to any Engliſh rebels. Ridolphi had been ſerviceable to her in his profeſſion of a banker; and ſhe knew that he was in favour with the Pope. When ſchemes to accompliſh

* Of this defence there is a remarkable proof in a letter from the earl of Shrewſbury to ſecretary Cecil. In the year 1570, Cecil entreated Shrewſbury to entice Mary to reveal what had been communicated to her of a plot at that time in agitation among the enemies of Elizabeth. Shrewſbury attended to his application, and wrote to him in theſe terms. "According to the Queenes Majeſties pleaſure mencioned in "your lettres of the third of this preſent, touching the late "talke of the Queen of Scotts unto me, I have as of myſelf "erneſtlie moved and exhorted her, that ſhe would in no wiſe "diſtruſte, but with full confidence open and reveal her mind "plainly unto her Majeſtie by ſome ſecrett lettre; whereof I "did promiſe aſſuraunce of ſafe delivery unto her Majeſties "owne hands, and no part thereof to be diſcloſed, otherwiſe "then ſhe would herſelf, and that in ſo doing ſhe ſhuld un-"doubtedly receive ſpecial comforte thereby. But trulie, I "cannot ſee that ſhe wil be perſuaded ſo to do by lettres. "Hir deſire is ſtill to reveale unto her Majeſties ſelf in her "owne preſence, that whiche ſhe ſaith ſhe will not els to any "living: Alledging, that ſhe is very doubtful that whatſo-"ever ſhe write, the ſame ſhall obteyn no credite at her Ma-"jeſtie's hands, but ſtill be hindred or ſteyed by doubts and "ſuſpicions. Nevertheleſs, ſhe never ſeemed to me ſo willing "as ſhe is preſentlie to conforme hirſelf unto hir Majeſtie. "She ſaith in more erneſt manner, than I have hard hir, that "ſhe will refuſe no condicions for hir Majeſties ſatisfaction, "that may any ways be invented and thought reaſonable. "She calleth upon God, with deſire that he will reject her "from his mercy utterly for ever, if her meaning be not ſin-"cere and faithful unto her Majeſtie, and ſo to contynewe "during hir lief true unto hir Majeſtie againſt al her High-"nes enemies whoſoever they be; and therefore will make "good proſe in caſe her Majeſtie will now receive hir into hir "grace and favor. Theſe words with many others to this "effect, ſhe uſed this daie unto me, whereof I thought good "to advertiſe you, that ye maie conſider and enforme thereof "unto hir Majeſtie, as ye think convenient or requiſite." Tutbury, 10 April, 1570. Haynes, p. 593.

her

Book V. 1572. her liberty were laid before her, it was her duty and her intereſt to attend to them. She had received letters from the Pope which were full of conſolations and piety; but he employed not in any of them the forms of language imputed to him. She had ſeen a printed Bull againſt Elizabeth; but ſhe had never made any ſolicitations for it. In foreign parts it might be true that her friends ſpoke and wrote often in a ſtyle that was offenſive to the Queen of England; but it was improper to blame her for any uſe that might be made of her name without her authority or conſent. To the Pope and the Spaniard ſhe had addreſſed no diſpatches, urging them to invade England; but ſhe had implored their aſſiſtance to re-eſtabliſh her in her dominions; and ſhe had intimated to Elizabeth her intentions of applying to them for that end. In fine ſhe ſaid, that if ſhe was farther to be called in queſtion upon the articles they had ſtated, ſhe would object to any high and inclement exertion of prerogative in their miſtreſs; but that being of the blood royal of England, ſhe was ready and willing to preſent herſelf in parliament, and to act there in her defence*. The commiſſioners of Elizabeth reported faithfully her behaviour; and it was not judged expedient to accept her offer of ſubmitting herſelf to a parliamentary trial or impeachment.

The maſſacre of Paris. While Elizabeth was thus ſedulouſly exerciſing her machinations againſt Mary, Charles IX. executed the deteſtable enterprize for which he had been preparing himſelf with the moſt profound diſſimulation. His exceſſive attentions to the Reformed, and his flattering negociations with the Queen of England, were moſt deceitful pro-

* Camden, p. 442.

ſunſhine

miſes of tranquillity. They were gleams of ſunſhine that preceded a black tempeſt. The order was given for putting to death all the proteſtants in Paris. The ſanguinary fury of the Roman catholic ſuperſtition aſſiſted the relentleſs vengeance of the prince. There enſued an indiſcriminate maſſacre of the Hugonots of every condition. Catharine de Medicis ſurveyed the carnage from a window, and took a pleaſure in the groans of the dying. The king her ſon was employed in firing often among the flying heretics, and was inceſſantly calling out to his guards, "Kill, kill." The inſolence of royalty never exhibited itſelf in a form ſo horrid; and in no other country or nation have ſcenes been perpetrated ſo inſulting to the pride, the reaſon, and the feelings of man. Sixty thouſand aſſaſſins gorged themſelves with blood, reſpecting neither rank, virtue, nor beauty; and unmoved alike with the innocence of infancy, and the imbecilities of age. The ſtreets of Paris were filled with dead bodies. At Rouen, Meaux, Troyes, Orleans, Angers, Bourges, Lyons, Toulouſe, and other places, the ſame execrable barbarities were committed. Charles IX. pretending that the Hugonots had entered into a conſpiracy againſt his life and his crown, commanded Monſieur de Fenelon, his ambaſſador, to employ this apology for his conduct to Elizabeth. Shocked with the enormities of his ſovereign, and aſhamed of his nation, this ſtateſman diſcharged reluctantly the duties of his office. The ſolemnity of his audience was awful and inſtructive. In the palace of Elizabeth there reigned a melancholy ſilence; and he paſſed to her between rows of ladies and courtiers who were arrayed in deep mourning. He made obeiſance to them on each ſide; but their eyes were

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caſt to the ground, and they received him with no ſalutation and no welcome*.

Its effect upon the affairs of the Queen of Scots.

This ferocious wickedneſs, while it explained to Elizabeth the treacherous policy of Charles IX. gave a cruel wound to the intereſts of Mary. The maſſacre of Paris and the aſſaſſination of ſo many Hugonots over France, was interpreted to be a conſequence of the confederacy which had been formed at Bayonne for the extermination of the Reformed. The proteſtants were every where tranſported with rage againſt the papiſts. Elizabeth prepared herſelf againſt an attack from the Roman catholic powers; and was haunted with the notion that they meant to invade her kingdom, and to give it to the Queen of Scots. Her ambaſſador at Paris, Sir Francis Walſingham, augmented her apprehenſions and terror. He compared her weakneſs with the ſtrength of her enemies, and aſſured her that if they ſhould poſſeſs themſelves of Scotland, ſhe would ſoon ceaſe to be a Queen. He repreſented Mary as the great cauſe of the perils that threatened her perſonal ſafety, and the tranquillity of her kingdom; and as violent diſeaſes required violent remedies, he ſcrupled not to counſel her to unite Scotland to her dominions, and to put to death a rival whoſe life was inconſiſtent with her ſecurity. The more bigotted proteſtants of Scotland differed not very widely in their ſentiments from Sir Francis Walſingham; and thoſe of them who were more moderate, were ſtill more attached to their religion, than to Mary. Amidſt the indignation and horror into which the ſubjects of Scotland were thrown by the ſanguinary outrages of Charles IX. and Catharine de Medicis, they ſurveyed the ſufferings of their ſovereign with a diminiſhed ſym-

* Daniel, Hiſt. de France, tom V. Fenelon, Dep. ap. Carte, p. 522. Digges, p. 239. 247.

pathy,

pathy, conſidered her rights with leſs tenderneſs, and felt their patriotiſm to burn with a flame leſs pure and ardent*.

The Regent is diſguſted with the earl of Morton, and tries without effect to negociate a peace.

The Regent found himſelf in a moſt critical ſituation, and though he wiſhed to be independent of Elizabeth, he was yet controlled by her faction. In the perpetual conflicts which preceded the truce, the earl of Morton was induſtrious to diſtinguiſh himſelf by cruelty; and the adherents of Mary thought it neceſſary to retaliate by a ſimilar ſeverity. It became a rule to lead out priſoners of every condition and rank to the gibbet. The juſtice of a trial was demanded in vain, and reviled as an idle formality. The lives of gentlemen were decided in ſport, and their laſt moments embittered by the ignominy of a death which the laws had alloted to malefactors. The avarice of Morton was equal to his inhumanity. He plundered and waſted with fury the eſtates of his adverſaries. He coined money of a baſe quality at his palace of Dalkeith, and impoſed it upon the people in the name of his ſovereign. He put a price upon the head of the earl of Northumberland, who had been detained till this time in the priſon of Lochlevin; and, greedy of the gold of Elizabeth, he diſgraced his nation by ſurrendering to her a nobleman, who, during his exile in England, had treated him with a laviſh hoſpitality and kindneſs †. The Regent was under the hard neceſſity of ſharing in the odium of actions which he could not prevent; and when the truce was effected by the interpoſition of Elizabeth and the King of France, he employed all his efforts to

* Digges, p. 241. 262. 271.

† Spotſwood, p. 263. Crawfurd, p. 224. Camden, p. 445. The counteſs of Northumberland appears to have treated with him for the ranſom of her huſband; but found herſelf unable to gratify his rapacity. Murdin, p. 186.

Book V. 1572. unite the two factions, and to negociate a laſting peace. Kircaldy and the Queen's friends were ready to meet his advances, and to accord to conditions that were reaſonable. The earl of Morton, however, by the ſecret inſtigation of Elizabeth, pertinaciouſly counteracted his intentions, and was eager to deſtroy his importance. The craft and the intrigues of Randolph aided the operations of Morton. Tranquillity and peace ſeemed to be ſtill at a diſtance; and Scotland was torn with diſtruſts and diſtraction *.

His death and character

It was an infinite mortification to the earl of Marre to be unable to retard, or to relieve the afflictions of his country, as he was ſtrongly animated with the bright hope of putting a period to its troubles, and of raiſing a flattering monument to his own glory. But he was not calculated to ſtruggle with the policy of Elizabeth, and the unprincipled obſtinacy of his own party. It was with indignation and ſurprize that he found himſelf a Regent in name only, and not in authority. His pride and patriotiſm were equally wounded; and that elevation from which he had vainly expected advantages to his nation and himſelf, was a ſource to both of the bitterest inquietude. The powers of his mind were not equal to the dangers with which he was encompaſſed; and an incurable melancholy aſſailing him, he died a martyr to his ſituation and his ſenſibilities. His zeal for the reformed doctrines afforded him a conſpicuous popularity; his love of his country was acknowledged to be ſincere; and his honour and probity entitled him to reſpect and confidence. But his talents for buſineſs were circumſcribed; he had in himſelf no reſources; and his policy was feeble and narrow. Though the unavoidable experience of his office had convinced

* Melvil, Memoirs, p. 233. Crawfurd, p. 240.

him

him that Elizabeth was hoſtile to the independency of Scotland, and that the earl of Morton was her ſervant and her accomplice, he yet heſitated to forſake the faction with whom he had acted ſo long. He looked back to his conduct againſt Mary with anxiety and compunction. He wiſhed to join himſelf to Kircaldy and Maitland, and to throw his weight into the ſcale of his legal and injured ſovereign. It was the part that became him, and by which he could ſerve his country with the greateſt probability of ſucceſs. Yet a miſtaken delicacy ſtill kept him in ſuſpence and irreſolution; and the courage which he could exert in the field, did not attend him in the cabinet. A little before his death, he appointed Alexander Erſkine, his brother, to be keeper of Stirling caſtle, till his ſon ſhould be of age; and recommended to him jointly with lady Marre, the care of the King's perſon *.

Eccleſiaſtical affairs.

During the regencies of the earls of Murray and Lennox the hiſtory of the church exhibits nothing that is memorable or important. Frequent attempts were made by the clergy to better their condition, and to augment their revenues; but the poverty of the crown, the averſion of the laity to ſurrender their appropriations of eccleſiaſtical benefices, and the tumult and agitation of civil affairs had uniformly defeated their purpoſes. During the regency of the earl of Marre, an innovation, however, took place in the government of the church, which was in a wild deviation from the platform of policy eſtabliſhed at the Reformation, and which deſerves to be explained.

The introduction of epiſcopacy into the Preſbyterian church.

When the archbiſhop of St. Andrews was executed, the earl of Morton procured a grant of the temporalities of that ſee. Out of theſe he allotted a ſtipend to Mr. John Douglas, a proteſtant

* Spotſwood, p. 264. Crawfurd, p. 241.

Book V. 1572. clergyman, who took upon him the title of archbiſhop. This violence excited cenſure and murmurs. In the language of the times it was pronounced to be a profanation of the Kirk, and a high contempt of God; and it underwent the ſcrutiny of the miniſters in applications, and complaints to the Regent. The matter was doubtleſs of too much importance to be overlooked; and a commiſſion of privy counſellors and clergymen was appointed in the name of the King to inquire into it, and to reform and improve the policy of the church. This commiſſion, upon the part of the privy council, conſiſted of the earl of Morton, the lord Ruthven, Robert abbot of Dunfermling, Mr. James Macgill, Sir John Ballenden, and Colin Campbell of Glenorchie; and upon the part of the church there were named John Erſkine of Dun, Mr. John Winram, Mr. Hay, Mr. Lindſay, Mr. Pont, and Mr. John Craig. There were long conſultations and debates; and the influence and management of the earl of Morton directed their determinations. It was reſolved, that till the majority of the King, or till the wiſdom of the three eſtates ſhould be conſulted, the titles of archbiſhop and biſhop ſhould continue as in the times which preceded the Reformation; and that a chapter of learned miniſters ſhould be annexed to every metropolitan or cathedral ſeat. It was determined that the ſees as they became vacant ſhould be given to thoſe of the proteſtant miniſtry who were moſt eminent for their qualifications; that the archbiſhops and biſhops ſhould exerciſe no higher juriſdiction than what was permitted to ſuperintendents; and that they ſhould be ſubject to the controul of the general aſſemblies of the church. It was agreed, that all abbots, priors, and other inferior prelates preſented to benefices, ſhould be examined by the biſhop or ſuper-

ſuperintendant of the dioceſe or precinct where the preferment was ſituated; and that their fitneſs to repreſent the church in parliament, ſhould be duely inquired into. It was judged that the King and the Regent ſhould recommend qualified perſons to vacant biſhoprics; and that the elections of them ſhould be made by the chapters of the reſpective cathedrals. It was ordered, that all benefices with cure under prelacies, ſhould only be diſpoſed of to officiating miniſters; that every miniſter ſhould receive ordination from the biſhop of the dioceſe, or the ſuperintendant of the province; and that the biſhops and ſuperintendants, upon the ordination of miniſters, ſhould exact an oath from them to recognize the authority of the King, and to pay canonical obedience to their Ordinary in all things that were lawful *.

By theſe artful regulations the earl of Morton did not mean ſolely to conſult his own rapacity, or that of the nobles. The exaltation of the proteſtant church to be one of the three eſtates, was a conſequence of them; and the clergy being the ſtrenuous enemies of Mary, he might by their means ſecure a decided influence in parliament. The earl of Marre as Regent giving his ſanction to the proceedings of the commiſſion, they were carried into practice. The deluſive expectation of wealth, which this revival of epiſcopacy held out to the miniſtry, was flattering to them; and they bore with tolerable patience this ſevere blow that was ſtruck againſt the religious policy of Geneva. Mr. John Douglas was deſired to give a ſpecimen of his gifts in preaching; and his election took effect notwithſtanding the oppoſition that was made to it by John Knox and other eccleſiaſtics, who ſtood up

* Calderwood, p. 50. 54. Spotſwood, p. 260.

Book V. 1572. for the rules and forms which had been eſtabliſhed at the Reformation. He was inaugurated in his office by the biſhop of Cathneſs, Mr. John Spotſwood, ſuperintendant of Lothian, and Mr. David Lindſay, who violating the book of diſcipline, communicated to him his character and admiſſion by the impoſition of hands. This was a ſingular triumph to epiſcopacy; and the exaltation of Douglas included other peculiarities remarkable and offenſive. He denied that he had made any ſimoniacal agreement with the earl of Morton; yet it was known that the revenues of the archbiſhopric were almoſt wholly engroſſed by that nobleman. He had promiſed to reſign, upon his inſtalment, the office of rector, which he held in the univerſity of St. Andrews; yet he refuſed to execute this engagement. He was in a very advanced age; and his mental qualifications, which had never been eminent, were in a ſtate of decay *.

A general aſſembly, which was holden at St. Andrews, conſidering the high moment of the new regulations introduced into the church, appointed commiſſioners to go to Mr. Knox, who was at this time indiſpoſed, and to conſult with him deliberately in his houſe, whether they were agreeable to the word of God. But from the arts of the nobles, or from the ſickneſs of Knox, it happened that this conference was not carried into execution. In a general aſſembly, however, which met at Perth, the new polity was reported and examined. The names of archbiſhop, dean, archdeacon, chancellor, and chapter, were excepted againſt as popiſh diſtinctions, and as ſlanderous to the ears of pious chriſtians. A wiſh was expreſſed that they might be exchanged for titles leſs profane and ſuperſtitious; and an una-

* Calderwood, p. 56.

nimous

nimous proteſtation was made, that the new polity was merely a temporary expedient, and ſhould only continue and prevail till a more perfect order ſhould be obtained from the King, the Regent, and the nobility. This tolerating reſolution left the new polity in its full force; and a colourable foundation was now eſtabliſhed for the laity to partake in the profits of biſhoprics. The ſimoniacal paction of Morton and Douglas was not long a matter of ſingularity. Mr. James Boyd was appointed to the archbiſhopric of Glaſgow, Mr. James Paton to the biſhopric of Dunkeld, and Mr. Andrew Graham to the ſee of Dunblain; and theſe compromiſing eccleſiaſtics, upon being allowed competencies to themſelves, gratified their noble friends with the greateſt proportion of their revenues *. The virtue of the common people approved not this ſpirit of traffic; and the biſhops of the new polity were treated openly with reproach, or with ridicule †.

The death and character of John Knox.

This remarkable innovation was hardly introduced into the church, when it loſt John Knox, its ſtrongeſt ſupport and firmeſt friend. The zeal which he had diſplayed in overturning popery, and in reſiſting the deſpotic projects of Mary of Lorraine, have diſtinguiſhed and immortalized his name; and upon the eſtabliſhment of the Reformation, he continued to act with fortitude according to his principles. His piety was ardent, and his activity indefatigable; his integrity was ſuperior to corruption; and his courage could not be ſhaken by dangers or death. In literature and learning his proficiency was

* Spotſwood, p. 261. Calderwood, p. 57, 58.

† They were called Tulchan Biſhops. "A Tulchan, ſays "Calderwood, is a calf's ſkin ſtuffed with ſtraw, to cauſe the "cow to give milk. The biſhop had the title, but my lord got "the milk or commoditie." Hiſt. of the Church, p. 55.

ſlender

Book V. 1572. ſlender and moderate; and to philoſophy he was altogether a ſtranger. His heart was open, his judgment greater than his penetration, his temper ſevere, his behaviour ruſtic. The fears and contempt he entertained of popery were extravagant; and while he propagated the reformed doctrines, he fancied he was advancing the purpoſes of heaven. From his conviction that the ends he had in view were the nobleſt which can actuate a human creature, he was induced to imagine that he had a title to proſecute them by all the methods within his power. His motives of conduct were diſintereſted and upright; but the ſtrain of his action and life deſerve not commendation. He was ever earneſt to promote the glory of God; but he perceived not that this ſublime maxim, in its unlimited exerciſe, conſiſts not with the weakneſs and imperfections of man. It was pleaded by the murderers of cardinal Beaton; and he ſcrupled not to conſider it as a ſufficient vindication of them. It was appealed to by Charles IX. as his apology for the maſſacre of Paris; and it was urged by Ravaillac as his juſtifying motive for the aſſaſſination of Henry IV. The moſt enormous crimes have been promoted by it; and it ſtimulated this Reformer to cruel devaſtations and outrages. Charity, moderation, the love of peace, patience, and humanity, were not in the number of his virtues. Papiſts as well as popery were the objects of his deteſtation; and though he had riſen to eminence by exclaiming againſt the perſecutions of prieſts, he was himſelf a perſecutor. His ſuſpicions that the Queen was determined to re-eſtabliſh the popiſh religion, were rooted and uniform; and upon the moſt frivolous pretences he was ſtrenuous to break that chain of cordiality which ought to bind together the prince and the people. He inveighed againſt

againſt her government, and inſulted her perſon with virulence and indecency. It flattered his pride to violate the duties of a ſubject, and to ſcatter ſedition. He affected to direct the politicians of his age; and the aſcendant he maintained over the people, drew to him their reſpect and obeiſance. He delivered his ſentiments to them with the moſt unbounded freedom; and he ſought not to reſtrain, or to diſguiſe his impetuoſity, or his peeviſhneſs. His advices were preſſed with heat; his admonitions were pronounced with anger; and whether his theme was a topic of polity, or of faith, his knowledge appeared to be equally infallible. He wiſhed to be conſidered as an organ of the divine will. Contradiction inflamed him with hoſtility; and his reſentments took a deep, and a laſting foundation. He conſidered the temporal intereſts of ſociety as inferior to the eccleſiaſtical; and unacquainted alike with the objects of government, and the nature of man, he regarded the ſtruggles of ambition as impious and profane; and knew not that the individual is carried to happineſs and virtue on the tide of his paſſions, and that admiration and eminence are chiefly to be purchaſed by the vigour, the fortitude, and the capacity which are exerted and diſplayed in public occupations. He inculcated retired and aſcetic virtues. He preached the unlimited contempt of this world; he was a mortal enemy to gaity and mirth; and it was his opinion that human life ought to be conſumed in the ſolemnities of devotion, in ſufferance, and in ſorrow. The pride of ſucceſs, the ſpirit of adulation, the awe with which he ſtruck the gaping and ignorant multitude, inſpired him with a ſuperlative conception of his own merits. He miſtook for a prophetic impulſe the illuſions of a heated fancy;

Book V. 1572. cy; and with an intemperate and giddy vanity he ventured at times to penetrate into the future, and to reveal the myſteries of Providence. Not contented with being a ſaint, he aſpired to be a prophet *. In diſcharging the functions of his miniſtry, his ardour was proportioned to his ſincerity. Aſſiduous and fervent toils, watchful and anxious cares waſted his ſtrength, and haſtened his diſſolution. He ſaw it approach without terror; ſpoke with exultation of the ſervices which he had rendered to the Goſpel and the church; and was almoſt conſtantly in prayer with the brethren. His confidence of a happy immortality was ſecure and firm, and diſdained the ſlighteſt mixture of ſuſpicion or doubt. He ſurrendered his ſpirit with chearfulneſs, and without a ſtruggle. It belongs to hiſtory to deſcribe with candour his virtues as well as his imperfections; and it may be obſerved in alleviation of the latter, that the times in which he lived were rude and fierce; and that his paſſion for converts, and his proneneſs to perſecution, while they roſe more immediately out of the intenſeneſs of his belief, and

* There is a panegyrical catalogue of his prophecies in Calderwood's Hiſt. of the Church, p. 59, 60. He himſelf often aſſerts in his writings his title to the character of a prophet; and on this ſubject there is a remarkable paſſage in the preface to one of his ſermons. "I dare not deny (leſt in ſo "doing I ſhould be injurious to the giver) but that God hath "revealed unto me, ſecrets unknown to the world; and alſo "that he hath made my tongue a trumpet to forewarn realms "and nations, yea, certain great revelations of mutations and "changes, when no ſuch things were feared, nor yet was ap"pearing; a portion whereof cannot the world deny, (be it "never ſo blinde) to be fulfilled; and the reſt (alas) I fear "ſhall follow with greater haſte, and in more full perfection "than my ſorrowful heart deſireth; notwithſtanding theſe re"velations and aſſurances, I did ever abſtain to commit any "thing to writing, contented onely to have obeyed the charge "of him who commanded me to crie." Hiſt. of the Reform. and other treatiſes, p. 88, 89.

the

the natural violence of his temperament, were keenly and warmly foſtered by his profeſſional habits. The members of every ſpiritual polity are neceſſarily employed in extending its glory and in advancing its intereſts; and in that age the conflicts between the popiſh and the proteſtant doctrines had been driven to their wildeſt fury. To protect religion is the apparent end of every form of eccleſiaſtical government; yet the articles of faith held out by each being diſcordant and hoſtile, the guides of every church are in a continual warfare. They contend reſpectively for the tenets entruſted to them; and where they are not corrupted by the riches of their eſtabliſhment into an indolent indifference, that brings religion into contempt, they are ſtrenuous like our Reformer to increaſe their conſequence, to diffuſe the malevolent diſlike of other religioniſts, and to kindle into ferment and agitation the angrieſt and the moſt incurable paſſions of mankind. They give a check to religion in its happieſt principle of univerſal benevolence; they are guards to prevent the truth from taking its boldeſt and wideſt range; the advantages they produce compenſate not their calamities; and perhaps it would be fortunate for human affairs, if the expence, the formalities, and the abuſes of religious eſtabliſhments were for ever at an end; if ſociety were deprived alike of the ſovereign pontiff with his tiara, the ſtalled biſhop, and the mortified preſbyter; if no confeſſions and creeds were held out as ſtandards of purity and doctrine; if faith and futurity were left unfettered like philoſophy and ſcience; if nations were not harneſſed in opinions like horſes to a carriage; and if every man's heart were the only temple where he was to worſhip his God.

THE

THE HISTORY OF SCOTLAND.

BOOK VI.

Book VI.

1572.

The earl of Morton is made Regent, and receives inſtructions from the Eſtates.

24 Novem.

UPON the death of the earl of Marre, the earl of Morton offered himſelf a candidate for the Regency, under the patronage of Elizabeth*; and there being no competitor in oppoſition to him, he was unanimouſly elected into that office by a convention of the three Eſtates. By this council, too, the guardianſhip of the King, and the keeping of Stirling caſtle, were confirmed to Alexander Erſkine; and he was enjoined not to permit papiſts to viſit the prince, to withhold from his preſence the adherents of the Queen, to allow an earl to approach him with two ſervants only, a baron with one, a gentleman by himſelf, and to deny acceſs to him to all perſons of whatſoever rank who ſhould be dreſſed in a ſword, or have armour of any kind†. The earl of Morton received likewiſe the inſtructions of this convention, and was particularly admoniſhed that he ſhould be careful to promote thoſe to diſ-

* Camden, p. 448. † Ibid, p. 458.

tinction

tinction and office, who beſide the ſuitable qualifications for diſcharging them, were remarkable for the ſoundneſs of their religious principles; that he ſhould grant no remiſſions for heinous crimes, and diſcover no favour or partiality to the murderers of the lord Darnley, and the earls of Murray and Lennox; that he ſhould not take the King out of Stirling caſtle, without the conſent of the privy council; that he ſhould neither conclude an alliance with foreign powers, nor engage in war without a parliamentary concurrence and approbation; and that he ſhould anxiouſly cultivate the amity of the Queen of England *.

He employs himſelf to divide the Queen's friends.

This circumſpection of the Eſtates, amidſt its anxiety for the King, betrayed a jealouſy of the earl of Morton, and ſeemed to announce a turbulent regency. To the Queen's faction his elevation was a mortal wound; and Maitland being ſenſible that he could now hope for no office or employment but through his favour, addreſſed a letter to him, in which, preſerving an equal diſtance from meanneſs and pride, he propoſed their reconciliation, and hinted at the ſervices he had done him with the Queen after the aſſaſſination of David Rizzio. The Regent, however, knowing his variable humour, and dreading his genius for intrigues and plots, encouraged not his advances, and ſent him notice, that he had fully repaid and compenſated all the obligations by which he had been bound to him †. But while he rejected this appli-

The generoſity of Kircaldy of Grange.

* Spotſwood, p. 267.

† The final rupture which took place at this time between Morton and Maitland induced the latter to complain very much to a common friend of the ingratitude of the former. Of the letter in which he made his complaint the following paſſage is remarkable. "He [Morton] was the chief procurer "and ſolicitor of my pretended forfeiture for a crime [the "murder

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application from Maitland, he was earneſt to gain to his ſide Kircaldy of Grange, and by that means to get poſſeſſion of the caſtle of Edinburgh; and as an agreement for a continuance of the

" murder of the King] whereof he knows in his conſcience *I* " *was as innocent as himſelf.*" Goodal, vol. i. p. 399. As Morton was actually concerned in the death of Darnley, it ſeems not unfair to infer from theſe words that Maitland was no ſtranger to that enterprize. The anſwer of Morton to the friend to whom the ſecretary had ſent his expoſtulation is very curious. " Towards his forfeiture, when it ſhall be conſider-" ed, who then had the government; for what cauſe the for-" feiture paſſed; I think they will not eſteem me the chief " procurer or ſolicitor thereof: for the earl of Lennox, then " Regent, having the adminiſtration of juſtice in his hands, " and the cauſe being the murder of the King his ſon, it " might be well thought that there needed little procuration " or ſolicitation. That I knew him innocent, in my con-" ſcience, as myſelf! the contrary thereof is true; for, I was " and am innocent thereof; but could not affirm the ſame of " him, conſidering what I underſtood of that matter of his " own confeſſion to myſelf before." Banantyne, Continuation of Knox, ap. Goodal, vol. i. p. 400. When this crimination proceeded from Morton, he had forgot, that in a convention of the Eſtates which had aſſembled early in the year 1570, he ſubſcribed a declaration which imported that Maitland was wrongfully accuſed of the King's murder, that he was an honeſt man, and that he was a good and profitable inſtrument for the furtherance of God's glory, and the repoſe and quietneſs of his native country. See Crawfurd, Memoirs, p. 133. There is ſomething very horrid in the wickedneſs and duplicity of the Scottiſh ſtateſmen of this age. If a ſcale, however, of their iniquity were made, it would appear, I imagine, that Maitland with all his ſuppleneſs and perfidy was not half ſo criminal as Morton and Murray. His purpoſes were leſs inveterate, and his malice leſs durable; and while he was ſuperior to them in genius and ability, it ſhould be remembered that he far exceeded them in cultivation and literature. But how ill did the hearts of theſe politicians correſpond with their heads! and how forcibly often does the page of hiſtory call forth our ſurprize and ſorrow, that the choiceſt gifts of heaven ſhould ſo uniformly be proſtituted! How bitter a ſatire is it upon the poſſeſſors of ſuperior talents, and how ſtrongly ſhould it check their pride, that it is men the moſt meanly endowed who are almoſt conſtantly eager to range themſelves on the ſide of virtue!

ceſſation

ceſſation from hoſtilities had been concluded by the earl of Marre, with a view to a full ſettlement of affairs, he affected an anxiety for concord and peace. He aſſured Sir James Melvil that he was ready to ſacrifice his reſentments and partialities to the good of his country; and, that in his character of Regent he was too proud to revenge the quarrels of the earl of Morton. The intereſt of the King he held out as the duty which it became him to conſult moſt; and he entreated Melvil to go to Kircaldy and to offer him his friendſhip, if he would act upon the ſame principle. As a proof of his ſincerity, and of his fixed intention to terminate the troubles of his country, he allured Melvil to this ſervice with the expectation of obtaining the priory of Pittenween; and he intimated to him, that a richer temporality with the keeping of Blackneſs ſhould be conferred upon Grange, and that his friends in Edinburgh caſtle ſhould be reſtored to their lands and poſſeſſions. Melvil was cordial and anxious for a coalition of parties, and undertook to execute the commiſſion entruſted to him. But the perfidious character of the Regent, his covetouſneſs, his connections with England, and the dread with which he was known to be haunted, that the King would one day be his ruin, were powerful obſtructions in the way of this ſtateſman in treating with Kircaldy and his faction. He yet ſurmounted them. By addreſſing himſelf to the partizans of Grange he was able to reconcile him to the union of the two factions. The lord Hume and Maitland were more ſuſpicious, and leſs open to perſuaſion; but they yielded at length to an expedient which afforded the flattering promiſe of certain and immediate advantages. After repeated conſultations upon the ſubject, Grange inſtructed Melvil to announce

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to the Regent, that he neither desired to have any temporality, nor the keeping of the castle of Blackness; but that he was disposed to promote the national prosperity by entering into a coalition of parties; that the lord Hume and Maitland of Lethington were inclined to concur with him; and that he would exert his fullest influence with the other friends of the Queen to engage them in the same measure. Melvil conceiving the business to be nearly at an end, informed the Regent of his success. The Regent, however, laying aside every disguise, told him that it was not his intention to unite indiscriminately with the adherents of the Queen; because in that case her party would continue in all its strength, and take an opportunity to circumvent him. It was his game to enfeeble it by divisions, and it was one of his inducements to favour Grange and his friends in the castle, that the Hamiltons and the earl of Huntley having richer possessions, a greater spoil would be gathered from their overthrow. Melvil comprehending now the full meaning of the Regent, endeavoured to separate Grange from the duke of Chatellerault and the earl of Huntley; but this disinterested and gallant soldier positively refused to contract any connection with the Regent, which had not for its object the general emolument of the nation, and which did not completely include the faction with whom he had acted. The Regent affecting to admire a generosity which he could not imitate, amused Melvil with the hope of going into the measures of Grange; and directing his attention to the friends of the Queen, whose probity was more vulnerable, he thought of alluring them not only by his own arts, but by the ministration of the Queen of England*.

* Melvil, p. 235. 238.

A few

1572. Practices and views of Elizabeth.

A few weeks before the death of the earl of Marre, Elizabeth had betrayed in an uncommon degree her fears of the Queen of Scots, and the extremities to which ſhe would proceed to free herſelf from every apprehenſion of this princeſs. She commanded Sir Henry Killigrew to repair to Scotland, upon the pretence of recommending concord and amity to the two factions. His ſecret inſtructions, however, were very different. He was directed to excite a terror in the inhabitants of a maſſacre like that of the proteſtants throughout the great cities of France; and he was entruſted with the management of a device ſtill more atrocious, and of far greater moment. It was repreſented to him that nothing was more neceſſary for the ſafety and the glory of Elizabeth, than that ſhe ſhould be delivered from the Queen of Scots; and that though this princeſs might be brought to the block in England, it was deemed more adviſable, that ſhe ſhould ſuffer in her own country. In this buſineſs he was commanded to deal with the King's faction and to allure them to make an application to her for the ſurrender of their ſovereign. He was to point out the dangers and ruin which would overwhelm them if ſhe ſhould eſcape out of England; and to give them aſſurances, that his miſtreſs upon the delivery of ſufficient hoſtages to anſwer for their ſincerity in conducting Mary to the ſcaffold, might be enticed to deliver her into their hands*. Killigrew ſet out for Scotland to manage this infamous commiſſion; but the earl of Marre, dying while he was upon the borders, he waited for new inſtructions from Elizabeth. The new inſtructions he received are not known; but it is preſumable, that he opened to the earl of Morton the intentions of his miſ-

* Murdin, State Papers, p. 224, 225.

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treſs; and that this nobleman was not diſpoſed to hazard his life and fortune upon an attempt ſo wild as that of a public execution of Mary in her own dominions.

The duke of Chatelherault and the earl of Huntley forſake the Queen.

But though this dangerous ſcheme was abandoned, Killigrew entered with keenneſs into the policy of dividing the friends of the Queen of Scots. The duke of Chatellerault and the earl of Huntley, leſs virtuous than Kircaldy, met the advances of the Regent and Killigrew. They agreed to unite with the King's faction; and the accommodation they made had no reference but to themſelves and their vaſſals. In this ſtate of affairs, it was apprehended, that Kircaldy and his friends would now preſs to be admitted to terms of peace. Killigrew therefore inſidiouſly foſtered their pride, by giving them privately explicit aſſurances that Elizabeth would preſerve herſelf in a fixed neutrality; and the Regent making a parade of patriotiſm, inſiſted that they ought to repoſe an entire confidence in him, and ſurrender at diſcretion. Kircaldy and his friends urged in vain, that upon articles of protection and ſecurity they would acknowledge the authority of the King, and contribute their influence to eſtabliſh the national tranquillity. An army was now preparing to march from the Engliſh frontier, and to lay ſiege to their caſtle. The Regent took precautions to protect the city of Edinburgh; and the time of the prolongation of the truce being expired, Kircaldy, after commanding the Queen's friends to leave the town, played his artillery againſt it with great fury *.

26 January. 1573.

A parliament aſſembling at Edinburgh, the Regent was confirmed by it in his office, and courted popularity by the inſtitution of very artful

* State Papers, vol. A. p. 156. Crawfurd, Memoirs, p. 244. Melvil, p. 241. Murdin, 230.

laws,

laws, which connected together the cauſe of the King and the proteſtant intereſt, and which conſidering as inſeparable the cauſe of Mary and the popiſh religion, ſerved to inflame the reſentment of her people to her prejudice. It was ordained that the true religion ſhould uniformly prevail over the kingdom; that the papiſts ſhould be admoniſhed to renounce their errors, and to ſubmit to the eſtabliſhed diſcipline; that if they refuſed to comply with the admonitions of the clergy, they ſhould be excommunicated; and that in caſes of obſtinacy or relapſe they ſhould be accounted to be infamous, and be incapacitated from enjoying any office, purſuing any action, giving teſtimony in any claim or ſuit, and ſitting upon any aſſize. It was enacted, that popiſh clergymen and all poſſeſſors whatſoever of eccleſiaſtical benefices ſhould ſubſcribe the confeſſion of faith, or be deprived of their livings and revenues. It was determined that the reformed religion ſhould be a teſt of loyalty; that all who ſhould abſtain from an open profeſſion of it ſhould be puniſhed as rebels; and that thoſe who ſhould acknowledge its doctrines, and yet be wanting in their duty to the King, ſhould be ſhut out altogether from the ſociety of the faithful. By another ordination all the tranſactions of the King's faction, from the time of his coronation, were decreed to be proper, profitable, and lawful; and all the proceedings of the Queen's friends were reprobated as injurious to juſtice, and of no power or efficacy *.

The Regent holds a Parliament.

Kircaldy though in a dangerous ſituation did not loſe his courage. He continued to give annoyance to the King's party by battering the town, and entertained ſanguine expectations of the arrival of troops from France. Charles IX. was infinitely diſcontented with the elevation of

The friends of Mary expect ſuccours from France.

* Black Acts, part iii. fol. 6. 11.

Book VI. 1573. Morton to the Regency; and as it was the act of a faction, and not of a general convention of parliament, it was accounted to be invalid. The defections of the duke of Chatellerault and the earls of Argyle and Huntley from the Queen were ſuppoſed to be political devices; and an opinion prevailed, that they were altogether under the direction of the King of France, from whom they had the aſſurance of large penſions. The cardinal of Lorraine had prevailed with Catharine de Medicis to agree to an embarkation of a thouſand men for Scotland; and as he propoſed to take the blame of this tranſaction upon himſelf as his private deed, it was underſtood that Charles IX. would be at liberty to diſavow all knowledge of it. Elizabeth, it was believed, would not break the alliance ſhe had ſo lately concluded with the court of France, and march an army into Scotland; and the ſtrength of Edinburgh caſtle was ſo formidable, that no apprehenſion was entertained of any aſſault, which could be made by the Regent*.

The treaty of Perth. In the mean time a treaty was advancing under the mediation of Killigrew, which communicated the fulleſt ſtability to the Regent, and which, by effectually dividing the Queen's friends, threw her affairs into a ſtate of hopeleſs languor and decay. The earls of Argyle and Montroſe, the lords Graham, Ruthven, and Boyd, Robert commendator of Dunfermling, and Sir John Ballenden as commiſſioners for the King, met at Perth with the earl of Huntley who acted for himſelf and his kindred and vaſſals; and with the lord John Hamilton who repreſented the Houſe of Hamilton and its dependencies. After a conference of ſome days they framed and adjuſted the articles of a

* Digges, p. 302 312. 314. Johnſton, Hiſt. Rer. Britan. lib. i.

general

general league of amity and peace. The object of this treaty was held out to be the removal of the troubles and civil wars which had disfigured the kingdom; and all persons were invited to take the benefit of it, who professed the protestant religion, and who, like the contracting parties, were disposed to assist its preachers, and to withstand its adversaries of every degree and of every nation. It was stipulated, that the earl of Huntley and the House of Hamilton should acknowledge the authority of the King, and confess that all the actions performed by them since his coronation, under the colour of any other power or government, had been unjust, and were of no validity. It was agreed, that no Scottish subject should directly or indirectly assist or justify those who should be engaged in practices against the established religion, the King's person, his state, and the government of the Regent; and that those who opposed not strenuously all attempts of this kind should forfeit the advantages of the treaty, and be open to punishment for their past transgressions. It was accorded, that all persons, faithful to the King, who had suffered in their estates and moveables, should be entitled to reclaim them, with the exception of horse and armour; that the castle of Spynie should be immediately surrendered to the Regent; that the earl of Huntley and the House of Hamilton, with their adherents, should disband their soldiers, give liberty to the prisoners in their custody, and take no payment of any ransoms which were due to them. It was determined, that the forfeitures passed against Huntley and the House of Hamilton with their respective vassalage and friends for their adherence to the Queen, should be of no force or operation; that an act of parliament should restore all persons to their e-

Book VI. 1573. 23 February.

Book VI. 1573. ſtates, blood, and proper conſequence, who ſhould return to the obedience of the King; and that an indemnity ſhould extend to all crimes committed from the 15th day of June 1567, excepting inceſt, witchcraft, theft, and the murders of the earls of Murray and Lennox*.

The ſiege of Edinburgh Caſtle. A few days after this league was concluded, Killigrew paid a viſit to Kircaldy. He detailed to him its articles, and intimated, that the Regent would allow him no other terms than what were offered in it to the friends of the Queen who ſhould acknowledge the authority of the King. This meſſage was unalluring and haughty; and Grange underſtanding it as an inſult, treated it with contempt. The earl of Rothes and the lord Boyd were ſent to demand his laſt reſolution. He perſiſted in thinking it a degradation of his rank and his honour to be put upon a footing with the meaneſt ſoldier who had ſerved on the ſide of the Queen, and to be called to ſubmit by a general and indiſcriminate invitation. But he expreſſed at the ſame time his willingneſs to abſtain from moleſting the peace of his country, to treat as a party with the Regent, and to accede to reaſonable conditions of agreement. He dropped an apprehenſion, however, that the Regent was more ſolicitous for his ruin than for the intereſt of the young King; and his fears were ſoon juſtified. For the Regent poſitively refuſed to enter into ſtipulations with him; and a few days after, Sir William Drury marched from Berwick with a formidable army. Edinburgh caſtle was inveſted; and Kircaldy defended himſelf with great bravery. But a heavy and well appointed artillery made every day new breaches in the walls; the

* State Papers, vol. A. p. 201. 204. Crawfurd, Memoirs, p. 251. 261.

garriſon

garriſon were at variance among themſelves; and their ſtrength amounted not to two hundred men. The caſtle was reduced to the laſt extremity. Kircaldy expreſſed it as his wiſh, that he might die amidſt its ruins; but the garriſon riſing in a mutiny compelled him to ſurrender it. He yielded himſelf the priſoner of Sir William Drury, who ſolemnly aſſured him of his own life and eſtate in the name of the Queen of England, and gave alſo the promiſe of the favour of his miſtreſs to Sir James Kircaldy, the lord Hume, Maitland of Lethington, the prior of Coldinghame, the biſhop of Dunkeld, and Sir Robert Melvil, who were taken with him in the caſtle. The Regent and Killigrew, offended with this clemency, adviſed Elizabeth to ſhow no partiality to the priſoners. Her determination was expected with impatience; and her letter violating the engagements of Drury, ordered Kircaldy and his friends to be delivered up to the Regent. An hundred relations of Kircaldy offered to be vaſſals to the Regent, and to pay him a yearly penſion of three thouſand marks if he would ſpare the life of this gallant commander. He was true, however, to his reſentments and his policy; and Kircaldy, with his brother Sir James, were hanged publicly at Edinburgh. Maitland of Lethington was poiſoned by his order in the priſon-houſe of Leith; and a report was circulated, that this unfortunate ſtateſman had finiſhed his career by a voluntary death. The lord Hume bought his ſafety with ten thouſand pounds. Sir Robert Melvil was pardoned upon the interceſſion of Killigrew. Crichton, biſhop of Dunkeld, and the prior of Coldinghame, being too poor and inconſiderable to excite rapacity or terror, were admitted with the common ſoldiers to the benefit of the treaty of Perth. All Scotland

1573.

Book VI. land was now under the command of the Regent*.

1573. The jealous ſpirit of Elizabeth.

Elizabeth inſpirited and promoted the violence and cruelty of the Regent; and, about this time, ſhe gave a ſignal example of her incurable jealouſies againſt the Scottiſh Queen. The French ambaſſador repreſented to her that the health of Mary was impaired by the rigours of confinement, and entreated that ſhe might be permitted to take the benefit of the ſprings at Buxton. Elizabeth inclemently heſitated, whether ſhe ſhould grant this favour; and lord Burleigh, ſtruck with her want of ſenſibility, was for once friendly to Mary, and ſeconded the application of the ambaſſador. The earl of Shrewſbury was commanded to carry his ward to Buxton; and to this place lord Burleigh alſo repaired to relieve his cares, or from indiſpoſition. The perfidious Leiceſter obſerving this coincidence of circumſtances, thought it remarkable enough to be a foundation of miſchief. He inſinuated to Elizabeth, that lord Burleigh and the earl of Shrewſbury had entered into a deſign to betray her to Mary. Her paſſions took inſtantly the alarm; and ſo powerful was the operation of this frivolous artifice, that while it nearly overſet her opinion of the fidelity of Burleigh, it compelled that miniſter to affect hoſtility to the earl of Shrewſbury, and to be more than uſually zealous againſt the Queen of Scots †.

The biſhop of Roſs goes into exile.

But while ſhe was giving way to her jealouſies, and ſtimulating the enormities of the Regent, ſhe yielded not to the ſolicitations with which he was now pertinaciouſly urging her for delivering the biſhop of Roſs into his hands. He was inflamed

* Murdin, p. 245. Camden, p. 449. Melvil, Memoirs, p. 240. 242. 243. Crawfurd, Memoirs, p. 263. 272. Calderwood, p. 62. Johnſton, Hiſt. Rer. Britan. lib. x.

† Strype, Annals, vol. ii. p. 249.

againſt

againſt this prelate with all the bitterneſs of an implacable and unprincipled enemy; and it was undoubtedly his intention to execute him publicly as a traitor to the King. Leſly in the ſolitude of his priſon heard of theſe ſolicitations; and full of anxiety and terror, ſent to Elizabeth a very laboured oration, ſtating all the arguments which ought to influence her in his favour. The French ambaſſador remonſtrated with her againſt violating by any cruelty to him the law of nations, and the principles and obligations of reaſon and honour. Her own counſellors were not fond of an outrage which might be reſented againſt the ambaſſadors of England. The applications accordingly of the Regent were finally rejected; and the biſhop of Roſs being brought before the privy council, was informed by lord Burleigh, that Elizabeth gave him permiſſion to paſs into Scotland, or into France. He deſired not, he ſaid, to return to his own country, as his religion was different from that eſtabliſhed there, as he approved not the authority of the King, and as the Regent was earneſt to take away his life. The privy council preſented to him the Queen's licence to depart for France; and after making proper acknowledgments for her clemency, he withdrew haſtily from her dominions. His zeal, however, for the Queen of Scots followed him; and he endeavoured to ſtir up the Emperor, the Pope, and the King of France to exert themſelves in her behalf. But his afforts were unavailing. The duke of Alva, upon whoſe genius for enterprize he chiefly relied, being this year recalled from the Low Countries, which he had driven to deſperation by his imperiouſneſs and cruelty, was ſucceeded in his government by Don Louis Zuniga de Requeſens, a perſon of inoffenſive manners; and who was more diſpoſed to pay court to the greatneſs of

Book VI. 1573. His character.

of Elizabeth, than to ſympathize with the calamities of her rival *.

Chagrined with his inability to promote effectually the intereſts of Mary, and fatigued with the buſtle and agitation of public life, the biſhop of Roſs was now to devote himſelf to the offices of religion, and to ſtudy. He had acted upon a great theatre, and in great ſcenes. It required uncommon talents to engage in political ſtruggles with the miniſters of Elizabeth; and in this contention he obtained reputation and glory. His fidelity in the cauſe of his Queen was inflexible; his exertions were vigorous; and her misfortunes ſerved to draw cloſer the tie of his attachment. He diſtinguiſhed himſelf as an able negociator, and as a forcible ſpeaker; and while he ſacrificed for her his private fortune, he expoſed his perſon to the greateſt hazards. His propenſities carried him keenly to virtue; but the ſituations in which he was placed taught him diſſimulation and artifice. To atchieve an honourable purpoſe he was willing to depart from the ſcruples and delicacies which are characteriſtic of a perfect integrity. But in the general ſtrain of his conduct, he exerciſed a candour and probity which are ſeldom attained by eccleſiaſtics who mingle in ſecular affairs. In his principles of government and religion he was firm and ſtrenuous. He reſpected too little the natural and inherent rights of mankind. He reſpected too much the dogmas and formalities of the Roman catholic religion. In his expectations and temper he was ſanguine. He put a high value upon his endowments, was open to adulation, and prone to credulity. In the controverſies of his age he was inquiſitive and ſkilful; and in polite learning he was a great maſter. His

* Camden, p. 449. Murdin, p. 95. Leſly, Negociations, p. 251. 252.

Hiſtory

Hiſtory of Scotland, which he wrote in the Latin language, is remarkable for the claſſical elegance of its compoſition, for an intereſting impartiality, and for an inſtructive experience in affairs. His defence of the honour of Mary, and his account of his negociations in her behalf are more partial, and more declamatory. In his private life he was modeſt, pleaſant, and amiable. Books, religion, and philoſophy fortified him againſt a hopeleſs dejection, and the anguiſh of diſappointments. He accounted it a part of wiſdom to ſeek for happineſs in the midſt of adverſity; and he endeavoured to reconcile himſelf to events which he could not control.

1574. The adminiſtration of the Regent is inſolent and oppreſſive.

By the treachery of the duke of Chatellerault and the earls of Argyle and Huntley, by the execution of Kircaldy, the death of Maitland, the exile of the biſhop of Roſs, the jealouſies of Elizabeth, the ſupineneſs of the Roman catholic princes, and the treaty of Perth, the affairs of Mary were reduced to the moſt wretched extremity. The Regent found himſelf in the plenitude of power, and was giddy with it. He was called by his ſtation to attend to the adminiſtration of the laws, to repair the diſorders which had been ſuſtained during the civil commotions, and to lead the people to induſtry and happineſs by ſecuring to them the fruits of their toils, and the bleſſings of peace. But while he affected to be governed by theſe views, he was eager to gratify his paſſions, and his rapaciouſneſs. Under the venerable names of law and juſtice, he exerciſed the moſt deſtructive tyranny. After taking meaſures to eſtabliſh tranquillity upon the borders, he gave orders for juſtice airs or courts to perambulate the kingdom. Theſe tribunals were every where the inſtruments of oppreſſion; and the judges who preſided in them, employed the terrors of the law

to

Book VI. 1574. to extort the wealth of the people*. The iniquities which had been committed in the times of confuſion and war were opened up, and made the ſubject of complaints and exactions. The moſt trifling offences, as well as the greateſt crimes, drew inquiry, and were compenſated by gifts. Making a trade of corruption he placed agents and informers in convenient ſtations; and theſe acting in concert with his judges, augmented their buſineſs, and the diſtreſſes of the nation. He levied fines at his pleaſure from the merchants for the importation and exportation of commodities; and he exacted with rigour the feudal perquiſites from the royal vaſſalage. He reduced the King's houſehold that he might draw to himſelf the greater proportion of the revenues of the crown. The jewels, which had gone away from the Queen in gifts, which had been pawned to relieve her neceſſities, and of which ſhe had been robbed by her rebellious nobles, were all claimed by him as a royal and unalienable property; and where they could not be produced, equivalents were demanded for them. He ordered whipping, and penance in churches, to be inflicted upon all perſons who were guilty of eating fleſh in Lent; and who could not buy by preſents an exemption from theſe ignominious puniſhments. It was his command, that all payments ſhould be made to him in pure gold and ſilver; and he diſdainfully refuſed the baſe money, which he had coined in his palace of Dalkeith during the regency of his predeceſſor †.

He embroils himſelf with the clergy.

Though the church was perpetually complaining of its poverty, he was yet deſirous of adding

* One of theſe courts was held at Jedburgh; and its enormities being very remarkable, *Jedburgh juſtice* became a proverbial expreſſion for legal proceedings that were arbitrary and oppreſſive. Crawfurd, p. 277. I feel for my country, when I obſerve that the expreſſion is not yet forgotten.

† Spotſwood, p. 272. Crawfurd, Memoirs, p. 273. 276.

to

to his riches from its profits. The thirds of ecclesiastical benefices constituted the proper fund for the support of the established clergy; but while this provision was narrow in itself, it had never been collected to its full value. Addressing himself to their wants, he assured them, that if they would surrender this revenue to the crown, he would be answerable to them for its true amount, and make the stipend of every minister to arise duly and regularly out of the tithes of his parish. He, at the same time, became engaged to restore to them the right and possession of their fund, if they should find that his scheme did not tend to their advantage. They embraced his offer, and thanked him for his kindness. But no sooner was he invested with the management of the ecclesiastical revenue than he appointed three or four churches to be under the care of one preacher, allocated to him a puny stipend, and deposited the surplus in his coffers. The brethren exclaimed that he had broken his covenant, and insisted, that he should perform his stipulations, or reinstate them in their revenue. He diverted himself with their distresses. Inflamed with anger, they indulged themselves in the bitterness of invective; and exposing the oppressions and cruelties of his government, and opening up the flagitious wickedness of his private life, held him forth to the people as an object of terror and execration*.

He engages in some popular measures.

Amidst the just and universal odium which prevailed against him, he yet engaged in some measures that were intitled to approbation. He resumed many estates which had gone away from the crown by the fraud and usurpation of potent subjects. He rebuilt the fortifications of Edinburgh Castle, and supplied it with ammunition

* Johnston, Hist. Rer. Britan. lib. i.

and

Book VI. 1574. and ſtores. The idea of collecting all the antient ſtatutes which were remarkable for their uſefulneſs or wiſdom, and of enriching the juriſprudence of his country from the laws of the Romans, ſtruck him as a great and honourable project; and while his conduct was a mockery of every form and principle of juſtice, he appeared anxious to have a regular code of legal inſtitutions. But from this ſcheme he was diſcouraged by the lawyers, who imagined, that it would deſtroy in a great meaſure, the neceſſity of ſuits, and detract from the profits of their profeſſion. By the vigilance of his ſpies he got information of John Ormeſton, one of the regicides; and this perſon being ſuppoſed to be the chief accomplice of the earl of Bothwel, his execution was a matter of joy to the people. The circumſtances, however, of his trial are unknown; and his dying confeſſion in the form in which it has deſcended to poſterity is ſuſpicious. It is ſaid, that he acknowledged his being privy to the murder, and confeſſed, that Bothwel had ſhewn him a paper ſubſcribed by the earls of Argyle and Huntley, ſecretary Lethington, and Sir James Balfour, in which they expreſſed their conſent to the execution of that horrid deed*.

New misfortunes aſſail the Queen of Scots.

Mary, in a ſtate of the moſt afflicting humiliation, preſerved her firmneſs of mind, and was viſited with new calamities. Charles IX. who from his high admiration of her perſon and endowments, and from his determined averſion to the proteſtants, would doubtleſs have been induced to engage in ſome great attempt to her advantage, expired this year in the flower of his age. Elizabeth, relieved by his death from all apprehenſions of him, found herſelf at liberty to proceed

* Crawfurd, Memoirs, p. 277. Spotſwood, p. 274. Goodal, vol. i. p. 392.

to

to the laſt extremities againſt her rival. The duke of Anjou, who ſwayed the ſceptre of France under the title of Henry III. was little inclined to the Scottiſh Queen, was incapable of any vigorous effort, and hated the houſe of Guiſe. Another misfortune too ſerved, about this time, to embitter her mortifications. She loſt her uncle the cardinal of Lorraine, who had conſtantly conſidered her intereſts as his own; and who joined to the conſequence of his family, a maſterly diſcernment in affairs, an indefatigable activity, and a reſtleſs paſſion for intrigue. Book VI. 1578.

Elizabeth, notwithſtanding the humble condition of Mary, was ſtill haunted with ſuſpicions and fears. She entertained a dread, that the young King would be carried into France, and that by his means her kingdom would be thrown into dangers and trouble. No apprehenſion could at this period be more groundleſs; yet it tortured her with inquietude. Circumſtances the moſt harmleſs and trivial, when connected with the Scottiſh princeſs, impreſſed themſelves ſo ſtrongly upon her imagination, that they ſeemed to impair her underſtanding, and to deſtroy the exerciſe of her uſual penetration. The counteſs of Lennox propoſing to pay a viſit to the King, her grandſon, aſked liberty for this purpoſe and obtained it; but in her way meeting the counteſs of Shrewſbury, they agreed to unite their families by the means of their children. Charles, the ſecond ſon of the former counteſs, who had lately been confirmed in the earldom of Lennox, paid his addreſſes to Elizabeth, the daughter of the latter counteſs by Sir W. Cavendiſh, her firſt huſband. Their nuptials were ſolemnized; and it was judged a matter of too little moment to apply to Elizabeth for her conſent. It was, however, with the utmoſt indignation, that ſhe received the in- The ſuſpicious temper of Elizabeth.

Book VI. 1574. telligence of this alliance. She imputed it to the Queen of Scots, and was alarmed with the dangers that might flow from it. She countermanded the journey of the counteſs of Lennox to Scotland; and ſending for that lady with her ſon and daughter-in-law, committed them to cuſtody. They were examined and reprimanded by her privy council. The earl and counteſs of Shrewſbury were ſuſpected as too friendly to Mary; and this princeſs thought it prudent to vindicate herſelf by letter from all concerned in this tranſaction. A gloomy diſcontent, notwithſtanding, continued to diſturb the Engliſh Queen; and appointing the earl of Huntingdon to be preſident of the council for the North, ſhe furniſhed him with ſecret and peculiar inſtructions*.

1575. The Regent commits new enormities. The Regent, encouraged by Elizabeth, and goaded on by his own paſſions, proceeded in exerciſing depredations and tyranny. He made a new coinage of baſe money; and after he had put it into circulation, he iſſued an order which commanded it to paſs only for its intrinſic value. The death of the duke of Chatellerault which happened in the beginning of this year appeared to be a ſignal to him for trampling upon the name and family of this nobleman. He committed to priſon all the Hamiltons, and all the other perſons of any condition, who had fought for the Queen at the battle of Langſide. It was in vain to complain that this conduct was a direct violation of the treaty of Perth. He compelled them to buy their liberty from him at an exorbitant price. He employed himſelf in ſowing diſſention among the nobles. He inſtigated Douglas of Lochlevin to take an opportunity to aſſaſſinate lord Arbroth; and this nobleman eſcaped

* Camden, p. 451, 452.

with

with difficulty the ambuſh that was laid for him. Reid, the biſhop of Orkney having diſpoſed of his eſtate to pious uſes, he prohibited the executors from fulfilling his teſtament, and took upon himſelf its direction and management. To be rich was a ſufficient crime to excite his vengeance. He entered the warehouſes of merchants and confiſcated their property; and when he wanted a pretence for any injuſtice, the judges and lawyers were forward to afford it. In the midſt of theſe tyrannical enormities, which involved the nation in diſtreſs and miſery, he exaſperated its ſenſibilities with the eaſe, the parade, and the openneſs of his private pleaſures. His palaces were uncommonly magnificent; and he indulged in entertainments and riot; his baths exceeded in ſumptuouſneſs and delicacy; and he was ſurrounded with concubines*.

Book VI. 1575.

A diſpute now happened upon the borders which threatened to involve Scotland in the calamities of war. Sir John Carmichael, and Sir John Foſter, the wardens of the middle marches of the two countries having met at Redſwire, the former, according to the border laws, ſurrendered the Engliſh delinquents to the latter, and demanded from him in return the Scottiſh priſoners who were in his keeping. Foſter avoiding to comply with his requeſt, told him, that enough had been done for that day. Carmichael inſiſted upon his claim, and preſſed its propriety; and Foſter, aſſuming an extravagant pride, deſired him to recollect that he was ſpeaking to his ſuperior. The attendants of the Scottiſh warden put their hands to their ſwords. The attendants of Sir John Foſter letting fly their arrows againſt the

A tumult happens on the borders.

* Johnſton, Hiſt. Rer. Britan. lib. i. Murdin, p. 282. Crawfurd, Memoirs, p. 279, 280.

BOOK VI. 1575.

Scots, who were few in number, compelled them to retire. Meeting, however, in their flight, a body of armed men, who were on their march to attend upon Carmichael, they haſtened back upon their ſteps, and, giving battle to the Engliſh, obtained a victory over them. Sir George Heron and twenty-four ſoldiers were killed in this encounter; and Sir John Foſter himſelf, with Francis Ruſſel, ſon to the earl of Bedford, Sir Cuthbert Collingwood, James Ogle, Henry Fenwick, and other perſons of diſtinction being taken priſoners, were carried to Edinburgh. The Regent, diſpleaſed with what had happened, treated them with courteſy, and gave them permiſſion to return home. Elizabeth, upon the firſt report of this diſpute, diſpatched Killigrew to Scotland to expreſs her diſſatisfaction, and to demand that Sir John Carmichael ſhould be ſurrendered to her. The obſequious Regent, to the great indignation of Scotland, conſidered her demand as a law; and Sir John Carmichael being given up to her was kept ſome time at York. An inquiry, however, being made into the caſe, Elizabeth upon finding that the blame reſted with Sir John Foſter, diſmiſſed the Scottiſh warden with preſents; and the Regent ſoon after meeting at Berwick with the earl of Huntingdon the preſident of the North, this diſpute was finally accommodated *.

Eccleſiaſtical affairs.

In this diſaſtrous period, the clergy augmented the confuſions of the nation; and the ark of the church was agitated with a furious tempeſt. Mr. Andrew Melvil had lately returned from Geneva; and the diſcipline of its aſſembly being conſidered by him as the moſt perfect model of eccleſiaſtical policy, he was infinitely offended with the introduction of epiſcopacy into Scotland. His

Mr. Andrew Melvil inveighs againſt epiſcopacy.

* Murdin, p. 284. Crawfurd, p. 280. Spotſwood, p. 274.

learning

learning was considerable, and his skill in languages was profound. He was fond of disputation, hot, violent, and pertinacious. The Scottish clergy were in a humour to attend to him; and his merit was sufficient to excite their admiration. Instigated by his practices John Drury, one of the ministers of Edinburgh, called in question in a general assembly the lawfulness of the bishops, and the authority of chapters in electing them. Melvil, after commending his zeal and his motion, declaimed concerning the flourishing state of the establishment of Geneva, and having recited the opinions of Calvin and Beza upon ecclesiastical government, maintained, that there should be no office bearers in the church whose titles were not to be seen in the book of God; and affirmed that the term bishop was no where to be found in it in the sense in which it was commonly understood; as Christ allowed not any superiority among ministers. He contended that Christ was the only lord of his church; and that the ministers of the word were all equal in degree and power. He urged, that the estate of the bishops, beside being unlawful, had grown unseemly with corruptions; and that if they were not removed out of the church it would fall into decay, and endanger the interests of religion. His sentiments were received with a flattering approbation; and though the archbishop of Glasgow, with the bishops of Dunkeld, Galloway, Brichen, Dunblain, and the Isles were present in this assembly, they ventured not to defend their vocation. It was resolved, that the name of bishop conferred no distinction or rank; that the episcopal estate were not more honourable than the other ministers; and that by the word of God their functions consisted in preaching, in administering the sacraments, and in exercising

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Book VI. 1575. eccleſiaſtical diſcipline with the conſent of the elders. The epiſcopal eſtate, in the mean while, were watched with an anxious obſervation; and their faults and demerits of every kind were charged upon them with rudeneſs and aſperity. In a new aſſembly this ſubject was again canvaſſed. It was moved, whether biſhops as conſtituted in Scotland had any authority for their functions from the ſcriptures? After long debates, it was thought prudent to avoid an explicit determination of this important queſtion. But a confirmation was beſtowed upon the reſolution of the former aſſembly; and it was eſtabliſhed as a rule, that every biſhop ſhould make choice of a particular church within his dioceſe, and ſhould actually diſcharge the duties of a miniſter. The Regent diſturbed with theſe proceedings of the brethren was diſpoſed to amuſe and to deceive them. He ſent a meſſenger to adviſe them not to infringe and diſfigure the eſtabliſhed forms; and to admoniſh them, that if their averſion from epiſcopacy was inſurmountable, it would become them to think of ſome mode of eccleſiaſtical government to which they could adhere with conſtancy. The aſſembly taking the advantage of this meſſage made a formal intimation to him, that they would diligently frame a laſting platform of polity, and ſubmit it to the privy council. They appointed, accordingly, a committee of the brethren for this purpoſe. The buſineſs was too agreeable to be neglected; and in a ſhort time Mr. David Lindſay, Mr. James Lawſon, and Mr. Robert Pont, were deputed to wait upon the Regent with a new ſcheme of eccleſiaſtical government. After reminding him, that he had been a notable inſtrument in purging the realm of popery, and begging that he would conſult with them upon any of its articles which he thought

thought improper or incomplete, they informed him, that they did not account it to be a perfect work to which nothing could be added, or from which nothing could be taken away; for that they would alter and improve it, as the almighty God might farther reveal his will unto them. The Regent taking from them their ſchedule, replied, that he would appoint certain perſons of the privy council to confer with them. A conference was even begun upon the ſubject of their new eſtabliſhment; but from his arts, or from the troubles of the times, no advances were made in it *.

The confeſſion of the earl of Bothwel.

This year the earl of Bothwel died in Denmark; and in his laſt moments being ſtung with remorſe, he confeſſed that he had been guilty of the King's murder, revealed the names of the perſons who were his accomplices, and, with the moſt ſolemn proteſtations, declared the honour and innocence of the Queen. His confeſſion was tranſmitted to Elizabeth by the King of Denmark; but was ſuppreſſed by her with a ſucceſsful anxiety †.

1576.

The Regent breaks with the earls of Argyle and Athol.

The national diſcontents were riſing in their violence, and no order of men were exempted from the oppreſſive domination of the Regent. The families of Argyle and Athol had ancient feuds; and it was the faſhion of the times to keep alive the memory of diſtant injuries. Sir

* State Papers, vol. B. p. 46. Johnſton, Hiſt. Rer. Britan. lib. i. Spotiwood, p. 276.

† Jebb, vol. ii. p. 227. It has never been publiſhed. Keith and other hiſtorians have preſerved what they call "the "earl of Bothwel's declaration at his death," and account it to be genuine. Their partiality for Mary induced them the more eaſily to fall into this miſtake. The paper they give is demonſtratively a forgery; and the want of the real confeſſion of Bothwel is ſtill a deficiency in our hiſtory.

Book VI. 1576. Colin Campbell upon the death of his brother Archibald, which happened the preceding year, had ſucceeded to the earldom of Argyle*. One of his vaſſals having committed ſpoil upon the eſtate of the earl of Athol, was ſeized by that nobleman, and condemned to be executed as a robber. Argyle applying to Athol procured his life and liberty. But the delinquent unworthy of the clemency ſhown to him, collected his companions; and entering anew the territories of Athol, ſpread widely his devaſtations, and carried away a large booty. Athol wrote to Argyle ſtating the offence, and deſiring that the criminal might be ſurrendered to him. No anſwer was returned to his letter. He put himſelf at the head of his retainers, and prepared to invade the eſtate of the earl of Argyle. The vaſſals of Argyle were in arms to defend him. A mandate from the Regent prohibited theſe nobles from engaging in hoſtilities; and informed them, that he would take upon himſelf the examination of their diſpute. They diſbanded their troops; and he formed the deſign of making them compenſate their tranſactions by exemplary fines. They were cited to preſent themſelves before the privy council; and he propoſed, upon their appearance there to commit them to priſon. A proſecution was then to be commenced againſt Athol for diſmiſſing a criminal againſt whom ſentence had been pronounced; and a charge of high treaſon was to be preferred againſt the earl of Argyle for gathering together the King's ſubjects, and arraying them for battle. Intimation of theſe contrivances being conveyed to the two earls, they diſobeyed his citation, and, laying aſide their private diſputes, entered into a confederacy to reſiſt their common danger. Holding the

* Crawfurd, Peerage, p. 19.

Regent

Regent at defiance, they anxiouſly waited for an opportunity to counteract his power, and to humble him *. Book VI. 1576.

By machinations ſtill more unworthy of his ſtation, the Regent kindled againſt him the angrieſt reſentments of the lord Arbroth, and lord Claud Hamilton. John Semple, of Baltrees, was poſſeſſed of a ſmall property of land, which had been gifted to his wife by the Queen, whom ſhe had ſerved as a maid of honour. It was contiguous to an eſtate which belonged to the Regent, who being willing to extort it from the proprietor, inſtituted an action againſt him before the lords of the ſeſſion. It was his plea, that the crown lands could not be alienated; and it was Semple's defence, that the gift had received the ſanction of the great and privy ſeals. But the judges being obſequious to the Regent, it was believed, that they would act by his direction. Semple exclaimed, "that if he ſhould "loſe the ſuit, he ſhould loſe his life too." Adam Whitefoord, one of his relations, taking his part, inveighed againſt the injuſtice intended him, and glancing alike at the enormities of the Regent, and the lowneſs of his ſtature, obſerved openly, "that Nero when compared to him was "indeed a dwarf." Upon the pretence of theſe ſpeeches they were immediately ſecured; and the Regent directed his agents to circulate a report, that they had been hired to murder him by the lord Arbroth, and lord Claud Hamilton. They were interrogated upon this report, and denied with ſcorn the diſgraceful charge that was imputed to them. The Regent was reſolved to conquer their obſtinacy; and to forfeit upon their evidence the lives and eſtates of the lord

He offends irrecoverably the lord Arbroth, and the lord Claud Hamilton. 1577.

* Spotſwood, p. 278. Crawfurd, Memoirs, p. 286.

Arbroth

Book VI. 1577.

Arbroth and lord Claud Hamilton. The torture of the boot was applied to Semple, who overcome with anguiſh, confeſſed whatever was required of him. Whitefoord, ſtronger and more intrepid, ſuſtained the torture, and proteſted his innocence. Upon a ſolitary declaration, the effect of pain, the Regent dared not to proceed againſt men of the higheſt rank. Whitefoord obtained his diſcharge, and was loud in his complaints. Semple was condemned to be hanged, and a ſcaffold was erected for his execution; but the Regent from timidity or ſhame, granted him a pardon, and confirmed by it the ſuſpicions entertained to his prejudice. The naked deformity of his practices, ſhocked and aſtoniſhed the nation. Terror, indignation, and hatred pervaded all the orders of men. The nobles, the clergy, and the commons concurred in wiſhing a deliverance from a domination, which had converted the laws into an engine of iniquity, and which had declared a relentleſs war againſt their natural and political rights. His perfidiouſneſs and cruelty, his rapacity and oppreſſion, his public corruption and his private vices, were held out to him in reproach. He trembled with all the enſigns of command, and in the midſt of his wealth. He heard the angry and inſtructive voice of the people; and he dreaded that power which mocking the proud imbecility of the tyrant, leads him out to the ſcaffold, and ſpills his blood to teach wiſdom to Kings*.

He is compelled to reſign his office.

Alexander Erſkine, who had been conſtituted guardian of the prince till the young earl of Marre ſhould attain his majority; and George Buchanan, who was his preceptor; inſtigated by private injuries which they had ſuffered from the Regent, and not unmindful of the intereſts of their coun-

James VI. aſſumes the government in his own perſon.

* Johnſton, Hiſt. Rer. Britan. lib. i. Crawfurd, Memoirs, p. 287.

try,

try, invited the earls of Argyle and Athol to Stirling. Their invitation was underſtood, and accepted. Theſe nobles embraced with eagerneſs the opportunity afforded them of complaining to the King of the inſolence of the Regent. The King was fully prepared to attend to them; and being now in his twelfth year, they inſinuated, that with the aſſiſtance of a council he might take upon himſelf the adminiſtration of affairs. They explained to him the character of the Regent, detailed his wild and exceſſive enormities, and hinted that he might even attempt to inveſt himſelf with royalty. They awakened in the King an anxiety for his ſafety and his rights, and animated him with the ambition of being the deliverer of his people. It was propoſed, that a convention of the nobles ſhould be called to aſſemble at Stirling to give their advice in an emergency ſo important. The King conſented to this meaſure; and Argyle and Athol were careful that letters of invitation to this council ſhould be delivered only to thoſe who were determined enemies to the Regent. In the mean time, the Regent alarmed with their viſit to the King, ſent diſpatches to him, requeſting that the law ſhould take its courſe with regard to them; intimating that if their treſpaſſes ſhould be paſſed over in ſilence, the royal authority would be expoſed to contempt in his perſon; and offering to reſign his office, if his intentions to ſerve the commonwealth ſhould meet with any controul or interruption. The King, who was now encouraged in his purpoſes by other nobles, was eaſily prevailed upon to diſregard theſe diſpatches. The lord Glammis, who had ſucceeded the late earl of Argyle in the office of chancellor*, and the lord Herries, were inſtructed to go to Edinburgh to the Regent, and to inform him, 1578.

1577.

* Crawfurd, Officers of the Crown, p. 132.

that

Book VI. 1578. that the King being ſenſible of the errors of his adminiſtration, and affected with the troubles of his people, was reſolved to take upon himſelf the government of the ſtate; and that it was expected, that he would abſtain from any farther exerciſe of his office. The Regent who had foreſeen the gathering ſtorm, found himſelf unequal to combat it, and was only ſolicitous to obtain the liberty of retiring to a ſecure retreat. He expreſſed his willingneſs to obey the royal will, and aſſured them, that he would reſign his office with pleaſure upon receiving from the King a formal diſcharge of his tranſactions, with a confirmation of it, by the three Eſtates. He was told, that this diſcharge and confirmation ſhould be granted to him. He declared himſelf to be ſatisfied, and appointed the earl of Angus to perform in his name the legal ſolemnities of the reſignation. The lords Glammis and Herries, accompanied by the earl of Angus, repaired to the King at Stirling. The nobles aſſembled themſelves. The earl of Angus repreſenting the earl of Morton, ſurrendered the crown, the ſceptre, and the royal robes; and the King was inveſted with them*. An order was iſſued to announce this event in the capital. The lord Lyon, king at arms, attended by the Heralds, proclaimed at the croſs of Edinburgh the King's acceptation of the government. The earl of Morton, covered with confuſion, was preſent at this ceremony; and proteſted, that his reſignation ſhould be invalid and contrary to law, if the King ſhould appoint any other perſon to be Regent. The people breaking into repeated and univerſal ſhouts of joy announced their happineſs, and his humiliation. He now, according to agreement, obtained a diſcharge from the King; and, that he might be induced to ſurrender without ſcruple the

* Johnſton, Hiſt. Rer. Britan. lib. ii. Spotſwood, p. 280.

caſtles

caſtles and forts in his poſſeſſion, it contained a protection to him in the fulleſt form againſt any trial or impeachment for any crime of whatſoever magnitude which had ever been committed by him; and the nobility, under a penalty of five hundred thouſand pounds, became bound that it ſhould be ratified and confirmed by the authority and ſanction of the three Eſtates *.

A council is appointed to aſſiſt him.

To give dignity to James VI. and to ſupply the defects of his age, a general council of twelve peers was appointed. Three of theſe in rotation for the ſpace of three months were particularly to wait upon him. They were to give him their advice in all matters of public and of private concern; to attend him to the meetings of the privy council; and to inſtruct him in the duties and accompliſhments which are proper and becoming in a King and a patriot †.

The enemies of the earl of Morton continue to oppoſe him.

The earl of Morton retiring to his palace of Dalkeith, thought to bury his afflictions and remorſe in the gratifications of luxury and voluptuouſneſs. But his enemies purſued him to his retreat. Glammis, the lord chancellor, and Ruthven, the lord treaſurer, going to him in the name of the King, required him to ſurrender the Caſtle of Edinburgh, and to give up the mint houſe with its utenſils and bullion. As he had amaſſed an immenſe treaſure during his adminiſtration, they demanded from him a large ſum to enable the King to enter upon his government with the greater ſplendour. As his power upon the borders was very conſiderable from the circumſtance that he had promoted his nephew the earl of Angus to be their lieutenant or chief commander, it was intimated to him, that the propriety of this

* Crawfurd, Memoirs, p. 297. Crawfurd, Officers of the Crown, p. 104, 105.

† Camden, p. 461. Johnſton, Hiſt. Rer. Britan. lib. ii.

nomination

Book VI. 1578. nomination would be enquired into. The earl of Angus having no eſtates in thoſe parts, his advancement, they ſaid, to a place of ſuch high truſt, was in oppoſition to ſound policy, and to eſtabliſhed rules. The earl of Morton heard theſe propoſals with a ſeeming compoſure, and conſidered them as intimations of hoſtility and danger. He expreſſed his readineſs to give up the mint houſe and its furniture, and he objected not to the appointment of a new lieutenant upon the borders. But he could not be perſuaded to advance any money to the King; and he was backward to ſurrender Edinburgh Caſtle. The lords Glammis and Ruthven were diſſatisfied with him; and before they returned to the King, they prohibited the inhabitants of Edinburgh to afford any ſupplies to the caſtle. Animoſities were thus engendered between the garriſon and the citizens; and in a ſally made by the former, ſeveral of the latter being put to death, the public diſcontents were driven to a hazardous extremity. The lords Rothes, Ruthven, and Herries were ſent by the King and the privy council to admoniſh the earl of Morton to lay aſide his obſtinacy, and not to kindle the flames of civil war *. He was ſenſible that this admonition was ſalutary; and agreeing to yield up the caſtle, the keys of it were ſoon after delivered to John Seaton of Touch and John Cunnyngham of Drumwhaſel, as repreſenting Alexander Erſkine who was conſtituted its governor †.

Unpopular promotions. About this time, at Stirling, in a tumult between the attendants of the lord Glammis, the chancellor, and thoſe of the earl of Crawfurd, the former was killed; and as a feud had ſubſiſted between them, a foul ſuſpicion was entertained of the latter. The enmities of the two families were embittered by this unfortunate accident; and the

* Johnſton, Hiſt Rer. Britan. lib. ii. † Spotſwood, p. 283.

nation

nation loſt a chancellor in whoſe wiſdom and probity it repoſed an entire and unſuſpicious confidence. His place was immediately filled by the earl of Athol, who, though a nobleman of great gravity and virtue, was impopular from the affection which he bore to the Roman catholic religion. The earls of Cathneſs and Eglinton with the lord Ogilvie, who were now promoted to a leading ſway in the adminiſtration of affairs, being alſo remarkable for their attachment to popery, the jealous ſpirit of the proteſtant clergy took the alarm, and excited diſguſts among the people. Ruthven the lord high treaſurer was known to be unſteady in his principles; and the other miniſters and favourites of the court, whatever claim they might poſſeſs to abilities, were inconſiderable in their power and fortunes. For the abbot of Dunfermling was ſecretary of ſtate, George Buchanan, keeper of the privy ſeal, Murray of Tullibardin comptroller of the King's Houſe, and James Macgill, clerk regiſter *.

The earl of Morton ſtung with ambition, goaded on by revenge, and invited by the ſituation of affairs, made an effort to recover his importance, and to puniſh his enemies. Operating upon the pride of the young earl of Marre, and upon the credulity of the old counteſs his grandmother, he alarmed them with ſuſpicions, that Alexander Erſkine was plotting to be the chief of his name, and to ſecure to himſelf the guardianſhip of the King, and the keeping of Stirling caſtle. After having inflamed their reſentments, he convinced them that the only expedient to eſtabliſh the greatneſs of their Houſe, was to obtain poſſeſſion of the King's perſon; and he made them an offer of men, money, and arms †. The earl of Marre

The earl of Morton attempts to regain his importance.

* Johnſton, Hiſt. Rer. Britan. lib. ii.

† Crawfurd, Memoirs, p. 298.

entered

Book VI. 1578. entered eagerly into his views. He haſtened to Stirling with a choſen band of ſoldiers; and being admitted with them into the caſtle, he reproached his aſtoniſhed and unſuſpicious uncle with treacherous purpoſes, informed him that he was now of an age ſufficient to take upon himſelf the guardianſhip of the King, and the command of the garriſon, pointed to his armed attendants, and ordered him to withdraw. The noiſe of this ſudden exploit reaching Edinburgh, threw the people into a panic. The lords of the council were in amazement; and it being ſuſpected that the earl of Morton was the plotter of this miſchief, three hundred citizens offered to guard them to Stirling. But by a diſpatch from the King, they were taught to conſider the diſturbance as the reſult of a private quarrel between the friends of the Houſe of Marre; and he invited them to come to him unarmed, and with their uſual retinue *. The King and his council were anxious to deſtroy all inteſtine diviſions; and, fearing the machinations of the earl of Morton, thought it prudent not to drive him to deſpair. It was recommended to the earl of Marre not to continue in hoſtility with his uncle; and the earls of Athol and Argyle were entreated not to remember the injuries they had received from the earl of Morton. Twelve commiſſioners were choſen to hear the complaints and the defences of the parties, and to determine all their differences. In a meeting at Edinburgh, they adjudged it to be right, that the earl of Marre ſhould have the charge of the King's perſon, and the keeping of the fortreſs of Stirling; and that Alexander Erſkine ſhould continue in the government of Edinburgh caſtle, and that when he attended the court, he ſhould enjoy the place of a gentleman of his majeſty's chamber. The

* Spotſwood, p. 285.

ſcene

ſcene for adjuſting the diſputes of the earls of Athol and Argyle with the earl of Morton, was a field between Edinburgh and Dalkeith. Athol and Argyle came to it with a train of three hundred horſemen; and Morton advanced to them, attended by a numerous body of his retainers. Their ſalutations were apparently cordial; and they agreed to bury for ever the memory of their private contentions. Morton then invited his new friends to rejoice with him in his palace of Dalkeith; and the day after, they proceeded to the King at Stirling. The young monarch congratulated his nobles upon their amity and alliance, and was elated with the hope, that a long tranquillity would now relieve the diſtreſſes of his kingdom. The earl of Morton was indefatigable to add to his power. He employed his wealth, his promiſes, and his abilities to divide his enemies, and to allure partizans. His ſucceſs was anſwerable to his exertions; and his returning ſtrength threatened the nation with new calamities. He procured the abolition of the council of peers, who by a quarterly rotation were to attend upon the King. Upon the pretence of having acted ſo lately in the Regency, he aſſumed the direction of the privy council. Flattering the King, and controlling him, he was eager to mount up to his former greatneſs*.

A parliament had been ſummoned to meet at Edinburgh upon the tenth day of July. But the earl of Morton being infinitely hated in the capital, it ſuited not his intereſts to carry the King there. A proclamation was therefore iſſued, calling the Eſtates to aſſemble at Stirling. The earls of Athol and Argyle, with the other nobles who were diſcontented with the proceedings of Morton, imputed this contrivance to him, and inveigh-

A parliament is held at Stirling.

* Johnſton, Hiſt. Rer. Britan. lib. ii.

Book VI. 1572. ed againſt it as in direct oppoſition to the laws. They reſolved to diſobey the proclamation, and to continue at Edinburgh. They conſidered the King as a captive; and it was ſuſpected that the earl of Morton meant to ſend him to England, and to diſſolve the antient alliance with France. They appointed the earl of Montroſe and the lord Lindſay to repair to Stirling to admoniſh their ſovereign not to encroach upon eſtabliſhed cuſtoms, and to object againſt the tranſactions of the three Eſtates. This oppoſition was reprobated by Morton as inſolent and factious. The three Eſtates met in the great hall of the caſtle of Stirling. The King in his robes addreſſed them; and when he had concluded his ſpeech, the earl of Montroſe and the lord Lindſay deſiring to be heard, proteſted, in the name of the chancellor and the nobles at Edinburgh, that a caſtle under the command of a captain and a garriſon, was a place which conſiſted not with the liberty and independence of parliament; that many members were abſent from motives of ſuſpicion and terror; and that the aſſembly being illegal, no acts paſſed in it could have any effect or authority. Theſe objections were over-ruled; and the earl of Montroſe and the lord Lindſay were ordered to be taken into cuſtody. The parliament declared itſelf free, and proceeded to the exerciſe of legiſlative rights. It approved the King's acceptation of the government, and confirmed the diſcharge granted to the earl of Morton, protecting him againſt all inquiry into the errors and enormities of his adminiſtration. It permitted the King to ſend the abbot of Dunfermling to Elizabeth to announce to her his elevation to the management of affairs, to requeſt her attention to the peace of the borders, to urge his claims to the eſtate of the counteſs of Lennox his grandmother, who

who was lately dead, and to treat for a league between the two kindoms*. Nor were the affairs of the church neglected in this parliament. Several ordinations were paſſed which were favourable to the clergy; and having preſented by commiſſioners the new platform of polity framed by Melvil and his friends, it was entruſted to a ſelect committee, who were to confer and reaſon upon it, and to make their report to the Eſtates when they ſhould next aſſemble†.

The King finds himſelf a priſoner to Morton.

The King, offended to be a priſoner in the direction of Morton, was pleaſed in ſecret with the proteſtation made to this parliament by the earl of Montroſe and the lord Lindſay. He contrived, accordingly, to favour the eſcape of the former, and entruſted him with a diſpatch to the lord chancellor. Montroſe though cloſely purſued by ſome horſemen reached Edinburgh. The King's diſpatch was opened. It entreated the chancellor to levy troops with expedition, and to deliver him from the control of the earl of Morton. The earl of Athol and his aſſociates were filled with an extreme joy. They gave the alarm to the inhabitants of Edinburgh, and prepared for hoſtilities. The enraged populace exclaimed every where in the ſtreets, "the earl of "Morton has betrayed his country; he has ſold "the King to the perſecutor of Queen Mary; he "has received a greater price for him than for "Northumberland." It was in vain, that the earl of Morton iſſued a proclamation in which he made the King to affirm that he was free and uncontrolled. This meaſure ſerved the more ſtrongly to rivet the oppoſite opinion. The kingdom was agitated with great ferments. Athol,

Argyle and Athol take arms to relieve him.

The articles of Stirling.

* Crawfurd, Memoirs, p. 301. Spotſwood, p. 284. Johnſton, Hiſt. Rer. Britan. lib. ii. † Calderwood, p. 82.

Book VI. 1578. Argyle, and Montroſe marched towards Stirling with ten thouſand men. The earls of Morton, Angus, and Marre, with an army inferior in numbers, but formidable from its diſcipline, took the field to oppoſe them, and diſplayed the royal banner. The two armies were ſoon in ſight of one another. Sir Robert Bowes, who had lately arrived from England under the pretence of reconciling the diſputes of the Scottiſh nobles, but with ſecret inſtructions to ſupport the tottering fortunes of the earl of Morton, dreading the event of an engagement, exerted all his efforts to produce an accommodation. Athol and his faction though nearly ſecure of a victory, were not in a condition to lay ſiege to Stirling caſtle. Their reſources were narrow; and Morton beſide the name of the King, had the command of immenſe wealth. Sir Robert Bowes counſelled them not to be elated with the expectation of a partial advantage, reminded them of the power and conſequence of his miſtreſs, aſſured them that the proſecution of the war would render it neceſſary for her to march an army into Scotland, and exhorted them to conſider that their deſtruction would then be inevitable. His perſuaſions diſpoſed them to negociate. To do honour to James VI. the articles of accommodation were ſo framed as to appear to be directed by him. He expreſſed his deſire that hoſtilities ſhould ceaſe, and acknowledged that a tender affection for him had engaged the chancellor and his friends to take up arms. It was his pleaſure that the chancellor and Argyle ſhould reſide with him in the caſtle of Stirling, with a retinue equal to that of any of the nobles there. He deſired that the earl of Montroſe and the lord Lindſay ſhould be admitted into his council; and he propoſed, with the aſſiſtance of four nobles to be choſen by each

1578.

each party, to conſider the grievances which diſturbed the public tranquillity, and to take the proper meaſures to remove them. By theſe heads of agreement which were called the articles of Stirling, and to which the leaders of the contending factions adhibited their conſent, a peace was unexpectedly concluded *. 14 Auguſt.

In the mean time, Pitcairn, the abbot of Dunfermling, was executing the commiſſion with which he had been entruſted to the court of England. Elizabeth expreſſed herſelf to be pleaſed with the elevation of James, was earneſt that the diſorders of the borders ſhould be adjuſted, and diſcovered a diſpoſition to conclude an alliance for the purpoſe of repreſſing the practices of foreign and domeſtic foes. Upon the ſubject of the eſtate of the counteſs of Lennox ſhe was not equally cordial. Charles earl of Lennox had left an infant daughter the lady Arabella Stuart; and it was contended in her behalf, that as ſhe was born in England, ſhe was the proper heir of the Engliſh eſtate which had belonged to her grandmother. Elizabeth however was not willing to give force to this argument, and to Negociations in England.

* Spotſwood, p. 287. Crawfurd, Memoirs, p. 308. Johnſton, Hiſt. Rer. Britan. lib. ii.

In a diſpatch from Sir Robert Bowes to lord Burleigh about this time, it appears that the latter had deſired the former to inquire into the progreſs which Buchanan had made in his hiſtory. "Buchanan, ſays Bowes, hath ended his ſtory wryt-"ten to the death of the erle of Murray. He propoſes to "commend it to print ſhortly; but one thing of late hath "been withdrawen from him, which he truſteth to recover, "or elſe to ſupply with foer travell. He accepteth your lord-"ſhip's commendations with great comfort, and returneth to "your lordſhip his humble duty and thanks." Striveling, 8th Sept. 1578. Murdin, p. 316. It is not improbable that my lord Burleigh ſaw the hiſtory of Buchanan before its publication, or at leaſt that part of it which concerned his miſtreſs, and the Queen of Scots.

Book VI. 1578. bar the preferable right of the Scottiſh King; and her jealouſy, at the ſame time, did not allow her formally to admit his claim, leſt a deciſive inference might thence have been drawn to eſtabliſh his titles to her crown. The abbot of Dunfermling demonſtrated from hiſtory that the predeceſſors of his ſovereign had ſucceeded by the rules of law to the earldom of Huntingdon, and to lands in Cumberland; and he beſought her not to violate juſtice in the perſon of her neareſt kinſman. But diſregarding all his arguments ſhe ordered the eſtate to be committed in charge to lord Burleigh the maſter of wards; and ſignified to Pitcairn that the King of Scots ſhould ſatisfy the creditors of his grandmother from the rents of the eſtate of the earl of Lennox in Scotland. This narrow and ſelfiſh conduct did not ſerve to awaken in James any high admiration of the Engliſh princeſs; and it gave offence in a great degree to the earl of Morton, who was deſirous to impreſs him with a lofty opinion of her generoſity and friendſhip *.

The King tries to reconcile the nobles.

The death of the earl of Athol. 1579.

Conforming to the articles of Stirling, James diſcovered a ſincere ſolicitude to compoſe the differences of the nobility. He declared himſelf to be actuated with the moſt patriotic views; and conjured them, as they reſpected his honour, their own, and the proſperity of the commonwealth, to lay aſide their ſuſpicions and jealouſies. After many delays, and with anxious and repeated importunities, he prevailed with them to aſſemble at Stirling, to detail their injuries, to offer compenſations and apologies, and mutually to forgive one another. But the profeſſions of kindneſs and friendſhip exchanged by them were merely acts of formality and ſhow. Their hearts continued

* Murdin, p. 315, 316. Camden, p. 461.

to

to be hoſtile; and in the midſt of feſtivity and gladneſs they concealed and exaſperated their hatreds. The earl of Morton, by a ſumptuous banquet, endeavoured to proclaim the happineſs and ſincerity with which he ſacrificed his reſentments to the public good. His entertainment, however, was followed by an alarming event. The chancellor was ſeized with a ſudden illneſs, and in four days was hurried to his grave. It was reproached to Morton, that in the unguarded moments of intoxication and riot, he had put into his glaſs a conſuming poiſon. The marks which appeared upon the dead body of the chancellor were remarkable and ſuſpicious. The phyſicians who examined them were poſitive that he had been poiſoned. The public were convinced of the guilt of the earl of Morton; and it altered not their opinion, that the authors of two rhyming ballads imputing it to him were executed for this offence. Nor was it conſidered as a proof of his innocence, that the privy council were forward in attempting to diſcredit the ſcandal; and the counteſs of Athol proteſted, that ſhe would not be ſatisfied till he ſhould ſubmit to a trial before the Court of Juſticiary *.

The death of the earl of Athol was of the greateſt advantage to the earl of Morton; for it relieved him from the apprehenſions of an able and formidable enemy; and by immediately employing his influence to procure the office of chancellor to the earl of Argyle, he mollified the vindictive fierceneſs of that nobleman. He had now little inquietude but from the Houſe of Hamilton; and he applied himſelf reſolutely to effect its overthrow. He taught the King to hate

The earl of Morton perſecutes the Houſe of Hamilton.

* Johnſton, Hiſt. Rer. Britan. lib. ii Crawfurd, Memoirs, p. 310. Crawfurd, Officers of State, p. 109.

Book VI. 1579. the lord Arbroth, and the lord Claud Hamilton as the deſtroyers of his grandfather; and induced him to believe, that their pretenſions to the crown were hazardous, and that he ought not to be eaſy, and could not be ſecure, till their power was ſo reduced as to be no object of any terror. The pretence for their ruin was their ſuppoſed concern in the murders of Murray and Lennox. A commiſſion to proceed againſt them was given to the earls of Morton, Marre, and Eglinton, to the lords Ruthven, Catheart, and Boyd. An intimation of their danger reached the two brothers, who knowing that no defence would avail them, ſought for ſafety in flight. The lord Arbroth after traverſing a great part of England in the diſguiſe of a ſailor, got his way into France. Lord Claud Hamilton concealed himſelf upon the Engliſh borders; and though the place of his retreat was known to Elizabeth, ſhe was generous enough not to betray him to his enemies. The earl of Arran, their eldeſt brother, had been long in a ſtate of lunacy; and though the object of a melancholy pity, was treated with indignities and cruelty. A complaint was preferred in his name to the court of ſeſſion under the ſanction of the King's advocate, that he had been confined by his brothers, debarred from marriage, and diſpoſſeſſed of his rights and property. Upon the foundation of this complaint, a ſummons was directed againſt the lord Arbroth and lord Claud Hamilton; and as they did not appear they were forfeited as rebels. A party of troops was then commanded to take poſſeſſion of the earl of Arran's Caſtle, and to ſet him at liberty. His ſervants reſiſted, and were overpowered. This reſiſtance was imputed as a crime to Arran; and it being decreed that he had been guilty of treaſon, he was expoſed to all its penalties. Theſe

ſhallow

ſhallow devices, and theſe unprincipled enormities, were expreſſive of the power of the earl of Morton; and they renewed and united againſt him the diſguſts and deteſtation of every order of the people*.

The King is made to inſult the Queen.

Mary, when her ſon aſſumed the direction of affairs in his own perſon, had entertained a hope, that ſhe might procure her liberty, and obtain the conſolation of being conjoined with him in the government of her kingdom. With a view of this kind, ſhe now diſpatched Monſieur Naw, her French ſecretary, to Scotland. He had inſtructions to demand a private audience of James; and he had public diſpatches for him from Mary, with a preſent of ſome jewels, and a veſt which ſhe had embroidered for his uſe, with her own hands, in the ſolitude of her priſon. The earl of Morton, who approved not of any intercourſe between Mary and her ſon, obſerved that the diſpatches were addreſſed to "James, prince of "Scotland," and affected to give way to reſentment and anger. He told Naw, that this language was inſolent and haughty, and deſired him to recollect, that James was King of Scotland. The privy council imitated the paſſions, and reiterated the ſentiments of their maſter. Naw was diſmiſſed with menaces and precipitation; and carried back to the Queen her diſpatches and her preſents†.

Negotiations for the marriage of Elizabeth with the duke of Alencon.

A negociation for the marriage of Elizabeth with the duke of Alencon had been opened before the acceſſion of his brother, the duke of Anjou, to the crown of Charles IX. The court of France, as well as this prince himſelf, who upon the promotion of his brother, took the title

* Camden, p. 464. Spotſwood, p. 307. Crawfurd, Memoirs, p. 311. 314.

† Johnſton, Hiſt. Rer. Britan. lib. ii.

of

Book VI. 1571. of duke of Anjou, were ſincerely anxious to conclude this alliance; and Simier, an agent, exquiſitely ſkilful in matters of love and gallantry, had been employed in England to advance it. Elizabeth ſeemed to think ſeriouſly of this marriage; and her ſtateſmen were enjoined to ſet before her all the probable advantages and inconveniencies which might reſult from it.* The duke of Anjou imagined that he was upon the point of obtaining an illuſtrious crown; and did his miſtreſs the honour to pay her unexpectedly a viſit at Greenwich. She was pleaſed and flattered with this gallantry; and her young lover, after having enjoyed ſeveral interviews with her, returned to France under the livelieſt hope of reaching the ſummit of his ambitious wiſhes. Elizabeth, however, while ſhe gratified her appetite for the fopperies of gallantry, was acting under the impulſe of political motives. While ſhe amuſed the court of France with this treaty of alliance, ſhe effectually reſtrained it from affording any aid to the Scottiſh princeſs; and the ſucceſs of her intrigues was the more agreeable to her, as ſhe was deeply impreſſed with apprehenſions that the duke of Anjou might match with a daughter of Spain, and have the Low Countries for her portion. If this event ſhould happen, ſhe held it to be certain, that France and Spain would unite with ardour to advance the intereſts of Mary; would find a wife for the King of Scots; and would exert their fulleſt powers to make a conqueſt of England, and to overthrow the proteſtant religion †.

Lord d'Aubigney arrives in Scotland, and ac-

The Houſe of Guiſe, to whom the humiliation of Mary was the greateſt misfortune, had fallen itſelf from greatneſs, and could not pro-

* Murdin, p. 336, 337. † Camden, p. 464.

more

mote her cauſe with Henry III. or Catharine de Medicis. But, there now arrived in Scotland under its auſpices, and with inſtructions to undermine the earl of Morton and the Engliſh intereſt, Eſme Stuart lord d'Aubigney. He was born in France; and the eſtate of d'Aubigney had come to his immediate anceſtors from John Stuart, a deſcendant of the family of Lennox, who had obtained it from Charles VII. as the recompenſe of military ſervices. He was graceful in his perſon, was remarkable for gentle and engaging diſpoſitions, and poſſeſſed in an eminent degree all the polite and inſinuating accompliſhments of the French nation. The young King of Scots, who was diſpoſed to pay a reſpectful attention to him as his relation, could not reſiſt his aſſiduities and flattery. He immediately admitted him a member of the privy council, made him a gentleman of the bed-chamber, beſtowed upon him the lordſhip of Arbroth, gave him the hope of more ſubſtantial favours, and diſcovered an inclination to repoſe an implicit faith in his directions and experience *.

quires the confidence of the King of Scots.

A parliament had been ſummoned to meet at Edinburgh; and to attend upon it, the King and his courtiers proceeded from Stirling. The public entry of the King into his capital was celebrated with a magnificence and pomp which expreſſed the affections of his people †; and it was obſerved

Parliamentary proceedings.

5 Nov.

* Johnſton, Hiſt. Rer. Britan. lib. ii.

† The pageants upon this occaſion have been deſcribed by a contemporary author, and mark the taſte of the times. "At "ſome diſtance from the Weſt Port the King alighted from his "horſe, and a ſtately canopy of purple coloured velvet being "held over his head, he received the magiſtrates of the city, "who came bare-headed all the way without the gate. Within "the gate ſtood Solomon, with a numerous train, habited "after the Jewiſh, or rather the Roman manner, with the "two women contending for the child, &c. As his majeſty "aſcended

Book VI. 1579.

obſerved as ominous to the earl of Morton, that lord d'Aubigney walked upon his right hand. The day after his public entry, the King went to the parliament in his robes of ſtate. The enſigns of royalty were carried by the earls of Angus and Argyle, and by Robert Stuart biſhop of Cathneſs, who had ſucceeded to the earldom of Lennox. The King, in a ſhort ſpeech to the Eſtates, expreſſed the anguiſh and ſorrow which he felt for the commotions which had ſo long diſturbed the nation; intimated the earneſt expectation he entertained of being able, by their wiſdom, to fix the public tranquillity and peace upon a laſting foundation; and aſſured them, that the great and anxious objects of his wiſhes and his cares were the preſervation of the proteſtant religion, the ſecurity of his ſubjects, and the glory of his kingdom. The parliament confirmed and ratified the acts which eſtabliſhed the reformation. It

" aſcended the ſtreet called the Weſtbow, there hung down " from the arch of the old gate, a large globe of poliſhed braſs, " out of which a little boy, clad like a cupid, deſcended in a " machine, and preſented him with the keys of the city, all " made of maſſy ſilver, and very artificially wrought, an ex- " cellent conſort of muſic all the while accompanying the ac- " tion. When he came down the High-ſtreet, as far as the " Tolbooth, Peace, Plenty, and Juſtice met him, and ha- " rangued him in Greek, Latin, and Scottiſh. Oppoſite to " the great church ſtood Religion, who addreſſed him in the " Hebrew tongue; upon which he was pleaſed to enter the " church, where one Mr. Lawſon made a learned diſcourſe in " behalf of the Reformed. When his majeſty came out, " Bacchus far mounted upon a gilded hogſhead at the market " croſs, diſtributing wine in large bumpers, the trumpets all " the while ſounding, and the people crying, " God ſave the " King." At the eaſt gate was erected his majeſty's nativity, " and above that the genealogies of all the Scots Kings from " Fergus the Firſt. All the windows were hung with pictures " and rich tapeſtry, the ſtreets ſtrowed with flowers, and the " cannon firing all the while from the caſtle, till his majeſty " reached his palace of Holyrood houſe." Crawfurd, Memoirs, p. 515, 519.

Was

was ordained, that the juriſdiction of the church ſhould conſiſt in preaching the word, in the correction of manners, and in the adminiſtration of the holy ſacraments*; and by this deſcription an indirect cenſure was conveyed of the claims and pretenſions of the biſhops. As dangers might reſult to the reformed doctrines from the practice that prevailed of travelling into foreign countries, it paſſed into a law, that the heirs of noble and rich families ſhould not be allowed to go abroad without an expreſs licence from the King, and without an explicit ſtipulation, that they ſhould remain in the conſtant profeſſion of the eſtabliſhed religion. It was enacted, that all perſons whatſoever who had three hundred marks of yearly rent, and all burgeſſes who were poſſeſſed of property to the extent of fifty pounds, ſhould provide themſelves with a bible and pſalm book in the Scottiſh language for their own inſtruction and that of their families. The lord Arbroth and lord Claud Hamilton, with eight perſons of their name and family, were voted to be rebels on the pretence of being concerned in the murders of the earls of Murray and Lennox; and their eſtates were confiſcated. The penſions which had been granted during the King's minority were revoked; and amidſt other civil precautions of high importance, a moſt remarkable ordination was framed, from which the enormous abuſes may be conjectured that had taken place in the court of ſeſſion. It was commanded under ſevere penalties, that the judges ſhould not make a traffick of juſtice, and give decrees for money or bribes preſented to themſelves, to their wives, or to their ſervants; and the three Eſtates recommended it to the King to fill up the vacancies of this court with perſons who underſtood the laws,

* Stat. James VI. Parl. 1579. c. 69.

and

Book VI. and who poſſeſſed a competent fortune, and an honeſt fame *.

1579. During the ſitting of the parliament the opinions of the earl of Morton were treated with little reſpect; and upon its diſſolution, the King, attended by d'Aubigney, returned to Stirling, and gave himſelf up to amuſements. This ſtranger enjoyed frequent opportunities to improve the impreſſions he had made, and took advantage of them. The King ſurrendered himſelf to his guidance, and diſcovered his affections by his generoſity. Robert Stuart, biſhop of Cathneſs, giving up the earldom of Lennox, it was conferred upon d'Aubigney; and he obtained, at the ſame time, the cuſtody of the caſtle of Dunbarton †. The biſhop of Cathneſs, in return for this reſignation, received the earldom of March, and the priory of St. Andrews. The earl of Lennox, aware of oppoſition and envy, prepared to ſupport his conſequence. He drew to him, and advanced in the King's favour, James Stuart, ſon to the lord Ochiltree. This perſon was ſingular in his character, and admirably ſuited for the part he was deſtined to act. He could aſſume a courtly and agreeable demeanour, but was prone to indiſcretion and inſolence. He was of a high courage, but could ſtoop to every meanneſs. He was ambitious, cruel, covetous, prodigal, and imperious. His penetration was exquiſite; he abounded in devices; and he was altogether a ſtranger to the ties and reſtraints of virtue and honour.

D'Aubigney obtains the earldom of Lennox.

1580. It was an infinite humiliation to the earl of Morton to obſerve the riſing greatneſs of the earl of Lennox; and he artfully circulated reports to his diſadvantage. He held him out as a devoted

His converſion from popery

* Johnſton, Hiſt. Rer. Britan. lib. ii. Statutes James VI. Parl. 1579. c. 68. 71. 72. 93. † Murdin, p. 342.

ſervant

ſervant to the Houſe of Guiſe, and to the Romiſh religion; and imputed his miſſion into Scotland to a deſign ſchemed in France for the converſion of the King, and for the deſtruction of the reformed eſtabliſhment. The clergy full of apprehenſions founded their complaints from the pulpit. The people aſſuming the tone of their teachers, exclaimed againſt the earl of Lennox as a papiſt; and prognoſticated calamities to the King and the ſtate from the ſecret practices of French policy. James was not willing to offend ſo powerful an order of men; and calling together at Edinburgh a ſelect convention of them, he informed them, that he himſelf had travelled with the earl of Lennox to turn him from the errors of popery, and counſelled them to proceed in that work. The earl promiſed to give an attentive ear to the truth. Frequent conferences were held; and the prime of the miniſtry exerted their talents for reaſoning, and diſplayed their eloquence. Lennox gradually enlightened and overcome, announced his inclination to embrace the reformed doctrines. In the church of St. Giles, before the magiſtrates of the city and a great concourſe of ſpectators, he abjured the ſuperſtitions and idolatry of the church of Rome; and adopting with a pious fervour the proteſtant religion, declared, that he was ready to ſupport it with his ſword and his life *. But notwithſtanding this ſtroke of addreſs, which was ſo agreeable to the body of the nation, ſome ſuſpicions were ſtill entertained by the more zealous of the brethren; for diſpenſations had been lately intercepted from Rome, which permitted the Roman catholics to promiſe, ſwear, and ſubſcribe whatever was required of them, if they ſhould

* Crawfurd, Memoirs, p. 319. Johnſton, Hiſt Rer. Brit. lib. ii.

continue

Book VI. 1580.

continue reſolute to advance ſecretly their religion. James perſiſting in his management, was deſirous to deſtroy the effect of theſe diſpenſations; and with this view, he enjoined a clergyman of the name of Craig, to frame a confeſſion of faith containing the ſtrongeſt abjuration of all the corruptions of doctrine as well as of form in the Romiſh communion, and bearing in its boſom that all who ſhould ſubſcribe it did "call "God to witneſs that they agreed to it in their "minds and hearts, and did not feign or diſſem-"ble in any ſort." To the truth of this confeſſion the King himſelf ſwore publicly, and that the teſtimony of his ſincerity ſhould be permanent, he honoured it with his ſubſcription. The earl of Lennox, the privy council, and the courtiers, were all forward to follow his example; and by this obſequiouſneſs and attention the clergy were induced in a great meaſure to with-hold their complaints *.

The clergy iſſue a decree aboliſhing epiſcopacy.

But while theſe condeſcenſions ſoftened the fears of the clergy, they ſtimulated their courage; and in a general aſſembly held at Dundee, they ventured to ſtrike a deadly blow againſt the eſtate of the biſhops. It was pronounced that the office of biſhop, as practiſed in Scotland, had no warrant from the Scriptures; and that it was introduced into the church by the folly and invention of men. It was ordained that all perſons in this eſtate ſhould be charged to forſake it, as offenſive to God; that they ſhould deſiſt from preaching, and from the miniſtration of the ſacraments, till they ſhould receive authority to exerciſe theſe offices from the general aſſembly of the church; and that in the event of their oppoſition and diſobedience, it ſhould be lawful to execute the ſentence of excommunication againſt

* Spotſwood, p. 059.

them *.

them*. Theſe were ſtrong and hardy ordinations; and that the buſineſs of the ſubverſion of the epiſcopal order might be carried on with advantage and expedition, it was commanded that a ſynodal aſſembly ſhould be holden in every province where a biſhop had been eſtabliſhed †.

The earl of Morton is ſuſpected of treaſonable practices.

The earl of Morton, diſconcerted, in danger, and unable to uphold himſelf by his own influence, looked abroad for aſſiſtance. But the machinations of a hated and unprincipled man cannot long be concealed; and the public was now alarmed with the intelligence that he had conſpired to deliver up the King to Elizabeth. He complained loudly to the King and the nobles againſt this imputation. The earl of Argyle, however, having returned to his old animoſities, expreſſed definitively to the privy council his perſuaſion of the plot; and the nation believed univerſally that he had entered into a correſpondence with the Queen of England to introduce an Engliſh army into Scotland, to betray his ſovereign, and like another Balliol, to poſſeſs the kingdom as the recompence of treachery. He inſiſted upon juſtifying himſelf by a trial. But it ſeemed not prudent to put him to an aſſize for a crime which might touch the honour of Elizabeth, and of which the proof muſt neceſſarily be difficult. He was informed that the King did not doubt his proteſtations of innocence; and a proclamation was iſſued, ſubjecting to rigorous penalties the inventors and diſpenſers of calumnies, which had the dangerous tendency to foment diviſions and diſcord between the King and the nobility. This artificial conduct, however, could not deceive the penetration of Morton;

A guard is appointed for the King's perſon.

* MS. Acts of Aſſembly. Spotſwood, p. 311. † Calderwood, p. 90.

Book VI. 1580.

and the privy council immediately explained their real ſentiments, by entering into meaſures to protect the King's perſon. The office of lord high chamberlain, which had lain dormant for many years, being revived, was beſtowed upon the earl of Lennox; and twenty-four perſons of rank and diſtinction were choſen, over whom he was to preſide, and who were habitually to attend the King, that they might guard him againſt a ſurprize. To this choſen band four perſons were appointed as auxiliaries; and they were to be in conſtant readineſs to give their ſervice if it ſhould be neceſſary *.

Elizabeth endeavours to ſupport the earl of Morton.

Elizabeth obſerved with anxiety the critical ſituation of the Scottiſh affairs; and it correſponded with her inſidious policy to prevent the downfal of the earl of Morton. She was fully convinced that Lennox meant to diſſolve the amity of the two kingdoms; and ſhe ſuſpected that he had obtained the government of Dunbarton caſtle, with the view of admitting foreign troops into Scotland, or of conveying the King into France. The apprehenſion of another device gave her inquietude. A rumour had gone abroad, that the King, by the perſuaſions of Lennox, had conſented to ſurrender his kingdom to the Queen his mother, under the proteſtation that ſhe had been depoſed unjuſtly by her ſubjects; and that he was immediately to receive it back from her by a formal and legal deed of reſignation. In conſequence of this tranſaction, it was dreaded by Elizabeth that the King would confirm to himſelf his kingdom, in a faſhion ſo unexceptionable and complete, that his rights would be univerſally acknowledged by his ſubjects, and that all their factions and diviſions would be ut-

* Crawfurd, Officers of State, p. 331. Crawfurd, Memoirs, p. 321. Spotſwood, p. 309.

terly

terly extinguiſhed. Tormented with theſe jealouſies, ſhe diſpatched Sir Robert Bowes to Scotland, with orders to charge the earl of Lennox with deſigns prejudicial to the peace and welfare of the two kingdoms. He was admitted to the privy council; and obſerving this nobleman, deſired that he might be removed, as he could not enter into the purpoſe of his embaſſy in his preſence. This requeſt appearing to be ſingular, the privy council expreſſed an inclination to know whether he had made it by the ſpecial charge of his miſtreſs, and demanded the exhibition of his inſtructions. Upon theſe points he refuſed to ſatisfy them; and the privy council being offended as well as ſurprized with his behaviour, gave a direct refuſal to his demand, and treated him as an ambaſſador without inſtructions. He complained that his miſtreſs was inſulted, and left Scotland without bidding an adieu to the King *. Book VI. 1503.

The capricious demeanour, and the ſudden departure of this miniſter, giving uneaſineſs to the King and the privy council, Alexander Hume of North Berwick was ſent to Elizabeth to inform her of what had paſſed, and to enquire into the practices by which the earl of Lennox had provoked her diſpleaſure. But the Queen of England, reſenting the contempt ſhown to Sir Robert Bowes, would not admit this envoy to an audience. He was referred to lord Burleigh, who told him, that the King of Scots had violated the law of nations, by calling upon an Engliſh ambaſſador to produce his inſtructions; but that his miſtreſs was inclined to impute this fault to the advice of his counſellors, who were in the intereſts of France. He affirmed that the earl of Lennox was an obſequious inſtrument of the The King ſends an ambaſſador to Elizabeth.

* Johnſton, Hiſt. Rer. Britan. lib. ii.

Book VI. 1580.

French court; that whatever he might pretend, he was a zealous papiſt in his heart; and that the Houſe of Hamilton being proſcribed and in exile, he was aſpiring to be declared ſucceſſor and heir to the King. He added with ſome warmth, "let your King remember that there is "no paſſion more violent than ambition; and let "the Scots remember what troubles the French "would have excited in their country, if the "Queen of England had not oppoſed them with "her power and her wiſdom *."

The earl of Morton is charged with the murder of lord Darnley.

This diſplay of hoſtility to the earl of Lennox, joined to the known partiality entertained by Elizabeth to Morton, and to the dread of ſome dark exploit againſt the King, involved the court of Scotland in perplexity and agitation. It was dangerous to delay any longer the deſtruction of the earl of Morton. James Stuart of Ochiltree preſented himſelf in a convention of the privy council at Holyrood houſe; and falling upon his knees before the King, addreſſed this ſpeech to him. "The duty in which I am bound "to your Majeſty, compels me to diſcover a "crime which has hitherto been concealed by "the power and intereſt of the criminal. The "earl of Morton, who ſits in your council, was "one of thoſe who conſpired the death of the "King your father. It conſiſts with your honour "and your ſafety, that he be brought to a trial; "and if I ſhall not prove my accuſation, I ſhall "ſubmit willingly to the puniſhment which the "law inflicts upon a traitor." He at the ſame time imputed a concern in Darnley's murder to Archibald Douglas of Whittingham, whom the earl of Morton had promoted to a ſeat in the court of Seſſion. The earl of Morton riſing up

* Camden, p. 482. Crawfurd, Memoirs, p. 323. Strype, Annals, vol. ii. p. 621.

with

with fortitude in his place, proteſted his innocence, and declared that he was ready to convince his majeſty of the raſhneſs of his accuſer, and of the malicious wickedneſs of his enemies. The King commanded the criminal and the accuſer to be removed; and an order was immediately iſſued for the apprehenſion of Archibald Douglas; but having received an intimation of the danger that threatened him, he had taken the road to England. The earl of Morton, after having been confined for two days in an apartment of Holyrood houſe, was conveyed under a ſtrong guard to Edinburgh caſtle, and entruſted to the keeping of Alexander Erſkine, his mortal enemy. A new and a more wanton indignity awaited him. He was ſent to be guarded in Dunbarton caſtle, of which the earl of Lennox was the governor *.

Elizabeth engages in intrigues to ſave his life.

Elizabeth was no ſooner informed of the accuſation againſt the earl of Morton, than ſhe diſpatched Sir Thomas Randolph with inſtructions to act vigorouſly in his behalf. This ambaſſador having obtained an audience of the King, made a ſplendid recital to him of the ſervices which had been rendered to the crown and the ſtate by the earl of Morton; inveighed againſt the earl of Lennox as a deceiver and an enemy; repreſented the danger of a rupture with England; and detailed the advantages of breaking the antient alliance with France. He then, in the name of Elizabeth, entreated James to reſtore the earl of Morton to his liberty; and aſſured him, that as ſhe would account his compliance with her requeſt to be a ſingular kindneſs, ſhe would be infinitely diſſatisfied with its refuſal. The King,

1581.

Randolph her ambaſſador preſents ſolicitations in her name to the King.

* Melvil, Memoirs, p. 254. Johnſton, Hiſt. Rer. Britan. lib. ii. Spotſwood, p. 310. Crawfurd, Memoirs, p. 325, 326.

Ed. K. VI. 1551. who had liſtened patiently to his harangue, replied with an affecting gravity, that the murder of his father was a point in which his feelings were warmly intereſted; and that he was certain Elizabeth could not oppoſe them ſo violently, as to inſiſt upon his relieving the earl of Morton from confinement before he ſhould be juſtified by a trial. He would be ſorry, he added, to afford her any juſt reaſon of offence, and would never be wanting in gratitude for her kindneſs and good offices*.

He addreſſes the three Eſtates.

26 Feb. A convention of the three Eſtates had aſſembled at this time for the purpoſe of granting a taxation of forty thouſand pounds, to be expended for the national defence in the event of dangers and hoſtility from abroad. Diſappointed in his expectations of moving the King to favour the earl of Morton, Randolph deſired admittance to this convention, and exerted himſelf to induce them to enter into the views of his miſtreſs. He rebrobated in the ſtrongeſt terms of cenſure the report that ſhe had conſpired to convey the King out of his dominions, and to maintain an aſcendency in Scotland,' by holding his perſon in captivity; and he recalled to their memory the cordiality and ſucceſs with which ſhe had defended their religion and liberties againſt the encroachments and ambition of the court of France. He told them, that if ſhe had been diſpoſed to conquer Scotland, ſhe might eaſily have accompliſhed that enterprize when their King was in his cradle, his mother a priſoner in England, and their ſtate divided with animoſities; but that inſtead of giving way to ambition, ſhe had diſtinguiſhed herſelf by an anxious tenderneſs to their nation, and by all the offices of the trueſt friendſhip. He affirmed, that ſince the arrival of the

* Crawfurd, Memoirs, p.

earl

earl of Lennox in Scotland, all her cares and love had been repaid with ingratitude. He accuſed this nobleman of exerciſing a deſpotical government over the King and his council, of having turned his mind from England, to which he owed his greatneſs and ſecurity, and of having fixed his affections upon France, which approved not his elevation to the royalty. He charged him with having removed from the King the earl of Morton and other faithful ſubjects, and with having ſurrounded him with perſons who were hoſtile to his kingdom and authority. He produced letters, which he ſaid had been written by the earl of Lennox to encourage foreign powers to undertake the invaſion of England. He dwelt upon the affliction with which Elizabeth beheld the growing hoſtility of the King; and while he adviſed them to remove the earl of Lennox from a ſtation where his practices were of the moſt fatal and ruinous tendency, he invited them to preſs the re-eſtabliſhment and grandeur of the earl of Morton. He conjured them not to obſerve with indifference the overthrow of the reformed religion, and the violation of the amity of the two kingdoms; and if they ſhould ſeek a remedy for their wrongs, by drawing their ſwords, he gave them the fulleſt expectation of the counſel, favour, and aſſiſtance of his miſtreſs *.

This diſcourſe, which was inſolent and ſeditious in the greateſt degree, was received with a merited deteſtation and ſcorn; and it was immediately diſcovered, that the letters which Randolph imputed to the earl of Lennox, had been forged, in order to accompliſh his ruin, and to reſcue the earl of Morton from the hazard of a

* Strype, vol. ii. p. 627. Camden, p. 483.

Book VI. 1581.

trial. The infamy of his proceedings was reproached to him; and it was to the ſacredneſs only of his character as an ambaſſador, that he was indebted for his ſafety. Nor did Elizabeth and her miniſters eſcape without cenſure upon this occaſion. For it was believed that Randolph would not have ventured to behave with this profligate audacity without their knowledge or commands. The fate of the young King of Scots excited compaſſion and fears, when it was conſidered that he was expoſed to practices ſo unſcrupulous and ſo violent; and while their vileneſs excited a preſent abhorrence, they ſerved to recal forcibly to the friends of Mary thoſe devices and papers which had been employed with ſo much induſtry to ſtain her reputation and her honour *.

An envoy arrives from the prince of Orange.

By another and unexpected machination, Elizabeth betrayed her partialities, and expoſed herſelf to ſuſpicion. The prince of Orange, inſtigated by her practices, diſpatched an envoy to James, who having extolled the valour and proweſs which his ſubjects had diſplayed in the Netherlands, took an opportunity to endeavour to rouſe a terror in him of the continual inventions of the popiſh powers againſt the proteſtant ſtates. By awakening the anxieties of the Scottiſh King about his religion and his kingdom, he meant to inflame him againſt the earl of Lennox, as a ſmiling and inſidious enemy; and to recommend to him the policy of a firm attachment to England. But this application was too obvious to deceive his penetration, and too feeble to ſhake his firmneſs. He expreſſed to the envoy of the prince of Orange, the affections which he bore to England and to the Reformation; and while he ſpoke with pleaſure of his eſteem for the earl

* Crawfurd, Memoirs, p. 329. Spotſwood, p. 312.

of

of Lennox, he forgot not to declare that the trial of the earl of Morton ſhould be conducted according to the moſt liberal rules of impartiality and juſtice.

Randolph was convinced that the deſigns of his miſtreſs could not be effected but by acts of real hoſtility. He held clandeſtine meetings with the enemies of Lennox, and the friends of Morton; and by inviting offers of money and men from England, he ſeduced the earls of Argyle, Montroſe, Angus, Marre, and Glencairn, with the lords Ruthven and Lindſay, to engage in a confederacy againſt their ſovereign. It was their purpoſe to procure the baniſhment of Lennox, and the enlargement of Morton. Their intrigues, however, having been diſcovered before they were ready to take the field, the majority of them were forward to forſake Randolph, and to give their influence to the earl of Lennox. The earls of Angus and Marre only continued to liſten to him; and rather than return to their duty, were diſpoſed to put their lives and eſtates upon the hazard of a war. The earl of Huntington and the lord Hunſdon were at the head of an Engliſh army upon the frontiers; but finding that the leading men in the conſpiracy had abandoned the earl of Morton and the Engliſh intereſt, they did not enter upon Scottiſh ground *.

Randolph endeavours to excite a rebellion.

James, true to his friends, and attentive to uphold his dignity, put his kingdom in a poſture of defence. He diſpatched the earl of Montroſe to the borders with five hundred horſe and two thouſand foot. Ten companies of choſen ſoldiers were kept near his perſon; and by a general proclamation, he commanded all the feudal and allodial militia to be in readineſs to attend upon the royal ſtandard. The friends of the earl of Mor-

The King acts with prudence and vigour.

* Camden, p. 483.

ton

Book VI. 1581. ton were unable to oppoſe theſe formidable preparations. The earl of Angus was ordered to render up his fortreſſes, and to go into baniſhment beyond the river Spey; the baron of Lochlevin was enjoined not to paſs the water of Cromarty; the earl of Marre was compelled to leave the caſtle of Stirling, and to ſeek for ſafety in flight; and Randolph, apprehenſive that his practices to excite a rebellion would draw upon him the warmeſt indignation of the King, retired to England with the greateſt precipitation. Upon his departure Sir John Seton was diſpatched to Elizabeth to complain to her of his machinations; but upon the pretence of his being a friend to the earl of Lennox, he was detained a few days at Berwick, and then commanded to return home. James giving way to his paſſions upon this new indignity, expoſtulated by letters with Elizabeth, and detailed the affronts which had been offered to him; and while he ſtated to her the criminal conduct of Randolph, he requeſted as an act of juſtice, that Archibald Douglas of Whittingham, who had been accuſed of his father's murder, and who reſided publicly at her court, ſhould be delivered up to him. Elizabeth taking indirectly to herſelf the demerits of her ambaſſador, affected to maintain that he was a perſon of unſtained integrity, that he was a friend to the tranquillity of Scotland, and that he was ready to juſtify himſelf to her privy council; and while ſhe declared that Archibald Douglaſs ſhould receive no marks of her attention or reſpect, ſhe yet neglected to take him into cuſtody, and to ſend him to Scotland, to undergo a trial for the crime imputed to him*.

The trial of the earl of Morton.

The chief promoter of theſe vigorous meaſures was James Stuart of Ochiltree; and the

* Johnſton, Hiſt. Rer. Britan. lib. ii.

favour

favour he enjoyed with the King and the earl of Lennox, did not paſs unrewarded. He had been appointed guardian to the earl of Arran; and upon a pretended reſignation from his ward, he aſſumed his titles. The death of that unfortunate nobleman happening ſoon after, he obtained his eſtate and his earldom; and immediately upon this promotion he received an order to conduct the earl of Morton from Dunbarton to Edinburgh. The earl of Montroſe entruſting his command upon the borders to a deputy, aſſiſted him in that buſineſs; and leſt any attempt ſhould be made for the reſcue of their priſoner, they were attended by a large body of infantry, and two troops of horſe. The earl of Morton was put upon his trial. The earl of Arran, and Mr. Robert Crichton, the King's advocate, charged him with conſpiring the death of the late King, and of being art and part in the murder. Denying his indictment, he pleaded not guilty. When the jurors * were called he objected to the earl of Argyle, the lord Seton, and Sir Patrick Hepburn, as irreconcileable enemies; but as they purged themſelves upon oath of malice and partial counſel, his objection was not admitted. From ſeveral evidences which were produced and examined, from the depoſitions of the regicides who had ſuffered, and from papers which were ſubſcribed by his own hand, it appeared that he was guilty of the charges imputed to him †. The jury having retired for a little time, re-

Book VI. 1581. 1 June.

* The earls of Argyle, Montroſe, Rothes, Glencairn, Eglinton, and Sutherland; the lords Seton, Ogilvie, Maxwel, Somerville, and Innermeith; the Maſters of Livingſton and Elphinſtone; Sir John Gordon of Lochinvar, Sir Patrick Hepburn of Waughton, Sir Patrick Learmont of Dairtie, and Sir William Livingſton of Kelſyth.

† Moyſe, Memoirs, ap. Goodal, vol. i. p. 333. Johnſton, Hiſt. Rer. Britan. lib. ii.

turned

Book VI. 1581. turned to the court, and by the mouth of the earl of Montroſe, their chancellor, declared him to be convicted of being in the council or knowledge of the conſpiracy againſt the late King, of concealing it, and of being art and part in the murder *. It was with extreme agitation and ſurprize

* His peers "being ripely adviſed with his inditement, the "tokens infallible and moſt evident, with the probations pro- "duced and uſed for verifying thereof, did all, with one voice, "find the ſaid earl of Morton guilty of *arte* and *parte*, fore- "knowledge, and concealing the King's murder." Goodal, vol. i. p. 330.

It is recorded by ſome hiſtorians that one of the evidences produced againſt Morton was the original deed for the murder of the King, to which he had ſubſcribed his name, together with Bothwel and the other conſpirators. It is alſo aſſerted that this paper was produced by Sir James Balfour, who upon the inſtigation of Lennox had returned from France to give his aſſiſtance in the overthrow of the earl of Morton. Cauſſin and Blackwood, ap. Jebb, vol. ii. p. 69, 70. 214. Sir John Scot, Staggering State of the Scots Stateſmen, p. 117. It is certain that Sir James Balfour arrived in Scotland from France to join with Lennox in overſetting the earl of Morton; and that he had actually been poſſeſſed of this deed, there is a ſtrong and remarkable evidence. It is an original letter [3 February, 1580.] written by Sir Francis Walſingham, in which there is this paſſage "Whereas the ſaid Sir James found in "a green velvet deſk, late the earl of Bothwel's, and ſaw and "had in his hands the principal bond of the conſpirators in "that murder [the ſlaughter of the King's father] and can "beſt declare and witneſs who were the authors and executors "of the ſame." Cot. Lib. Cal. 6. ap. Goodal, Life of Sir James Balfour, p. 5. It alſo appears that a bond was ſubſcribed by the conſpirators, from a letter written by Archibald Douglas, one of the murderers. Robertſon's Appendix, p. 359. It is likewiſe obſervable, that Biſhop Leſly, addreſſing himſelf to Murray and Morton, has this paſſage. "We can "tel you, that there were interchangeable indentures made "and ſubſcribed by you, that he which had the beſt opportu- "nitie, offered to make him [the King] away, ſhould forth- "withe take it in hand, and diſpatche him." Defence of Mary, 76, ap. Anderſon, vol. i. There is moreover a diſpatch of Monſieur Fenelon, the French ambaſſador, in the year 1574, which confirms the reality of this bond. Carte, Hiſt. vol. iii. p. 531.

that

that he heard this verdict. Striking the ground with his cane, he exclaimed, "Art and part! art and "part! God knows it is not ſo." The ſentence of the law was pronounced. It was commanded that he ſhould be hanged upon a gibbet, that his head ſhould be cut off, and that the quarters of his body ſhould be affixed to the moſt public places of the city *.

His confeſſion and death.

After having received his ſentence, the earl of Morton was carried back to his priſon; and during the night he ſlept more ſoundly than uſual. In the morning he was viſited by Mr. James Lawſon and other clergymen. They recommended it to him to diſburden his conſcience, and to make a plain confeſſion of his guilt. He informed them that upon his return from England, whither he had fled upon the ſlaughter of Rizzio, the earl of Bothwel propoſed to him the murder of King Henry, as an enterprize agreeable to the Queen, and ſolicited him to take a part in it; but that he refuſed to join with him in that criminal meaſure. He acknowledged that Bothwel continuing to urge his aſſiſtance, he deſired to be ſatisfied by a warrant ſubſcribed by the Queen, that the plot was known to her; but that this nobleman never produced to him any authority of this kind. He confeſſed that Archibald Douglas had earneſtly entreated him to join in the murder; and that he had given his countenance and friendſhip to this perſon, although it conſiſted with his certain knowledge that he had actually aſſiſted Bothwel in its execution. He knew, he ſaid, that the conſpiracy was formed, and he acknowledged that he had concealed it; but he denied that he had ever conſented to its

* Crawfurd, Memoirs, p. 333. Spotſwood, p. 313.

perpe-

Book VI. 1581.

perpetration *. When his confeſſion was communicated to the King, he mitigated the rigour of his ſentence, by giving orders that he ſhould only be beheaded, and by allowing that his body ſhould be interred. The keeper of the priſon announced to him that the laſt hour of his life was arrived. The earl of Arran, at the head of a ſtrong guard, conducted him to the place of execution. His behaviour upon the ſcaffold was full of contrition and penitence. In his private devotions he was fervent; and while the attending clergymen performed the offices of religion, his ſighs were frequent, and his agitation manifeſt. He yet approached the block with a decent firmneſs, and fitted himſelf for the fatal ſtroke.

* I take theſe particulars from the confeſſion of the earl of Morton to the clergymen who attended him. Yet I muſt obſerve that this paper is imperfect, and expoſed to ſuſpicions. From the continuation of Hollinſhed's Chronicle, p. 429, it is to be gathered that the earl of Morton explained to theſe clergymen at great length the cauſe and contrivance of King Henry's murder, and that he mentioned without reſerve the names of the conſpirators. But in the confeſſion drawn up by them, this detail and information do not appear. From the Memoirs of Sir James Melvil it is evident that the earl of Morton made an acknowledgment to them that he had agreed to convey the King into England; but in the confeſſion he is made to deny that he had ever engaged in this meaſure. Memoirs, p. 255. State Papers, vol. A, p. 162. Confeſſion ap. Appendix to Crawfurd, p. 7. From the face of the confeſſion it is obvious that it was not dictated by the earl of Morton; and it contains particulars from which it is paſt a doubt that the clergy who framed it were influenced by motives propitious to the advancement of their own order, hoſtile to the intereſts of Mary, and favourable of conſequence to the earl of Morton. They knew that the earl of Lennox and the Queen's faction were anxiouſly buſy to effect her reſtoration to her crown; and they dreaded this event as alarming and dangerous to the proteſtant eſtabliſhment. The confeſſion accordingly which is imputed by them to Morton, muſt be read with many allowances, and deſerves not by any means to be treated with the reſpectful attention that is due to a perfect and unſuſpected record.

The

The Maiden falling down, ſevered his head from his body *. A coarſe garment was thrown over his remains; and the ſun was already ſet, when mean men taking up his body, depoſited it in the burial place of the common people. His relations, from a terror of his enemies, or from an adulation of them, paid no reſpect to it; and thoſe whom he had ſerved during the period of his greatneſs, were not moved by gratitude to exhibit any mark of attention to his memory. His misfortunes and death were lamented by no ſhow of ſenſibility, and no ſign of mourning. The day after his execution, his head was fixed upon the higheſt part of the public gaol of the city †.

His character.

The earl of Morton, the laſt of the Scottiſh Regents, was low in ſtature, had an engaging countenance, and poſſeſſed a form and habit vigorous and active. His natural capacity and endowments were uncommon; and his experience in the world, and in buſineſs, was moſt ample. He had known the greateſt changes of fortune; the evils of poverty and exile, the advantages of immenſe wealth and exorbitant power, the blandiſhments of flattery, and the wretchedneſs of the moſt abject humiliation. He engaged himſelf in the purſuits of ambition with a pertinacity and ardour that could neither be repreſſed nor fatigued; and he advanced in them with no fear of ſhame, and no deſire of glory. He was rather inſolent than haughty, rather cunning than wiſe, and more artificial than politic.

* "He cauſed to bring home that heading inſtrument called "*The Maiden*, out of Halifax in Yorkſhire, wherewith he "was firſt himſelf beheaded, 2d June, 1581." Sir John Scot, Staggering State of the Scots Stateſmen, p. 3.

† State Papers, vol. A. 162. Johnſton, Hiſt. Rer Britan. lib. ii. Spotſwood, p. 314. Crawfurd, Memoirs, p. 336.

In

Book VI. 1581. In a period when every ſtateſman was a ſoldier; he had talents for war as well as peace; but his courage was more undaunted in the cabinet, than in the field. He was ſubtle, intriguing, and treacherous. He was ſtained with rebellion and murder; and from the incurable malignity of his nature, he was inclined to wanton in miſchief, and to take a delight in the enormities of wickedneſs. He was cloſe, cruel, covetous, and vindictive. He gratified without ſcruple the madneſs of his paſſions, and the whimſies of his caprice. His rapacity was heightened and deformed by inſults. He was forward to encounter every ſpecies of execration and odium. The contempt of integrity, which marked and polluted his public conduct, was alſo characteriſtic of his private life; and in both he diſdained alike the cenſure and diſapprobation of his compatriots. But while the vices of the man were not ſo pernicious as the crimes of the politician, they were accompanied with cultivation and luſtre. His mode of living, though voluptuous, was taſteful. His palaces and gardens were ſplendid beyond the faſhion of his age. His luxury had the charm of refinement; and while an ardent propenſity carried him to the ſex, his amours were delicate and elegant *. He relieved the agitations, and the cares of ambition, with the ſmiles of beauty, and the ſolacements of love. But while his paſſion for pleaſure appears with ſome advantage amidſt the deformities of his character, it was little ſuited to the complexion of his times. The auſterity and gloom which the preachers had excited in the body of the people, and which ſtood in the place of religion, were hoſtile to gallantry in the greateſt degree. His ſenſualities, though the moſt venial of

* Johnſton, Hiſt. Rer. Britan. lib. i.

all

all his errors, rouzed up againſt him the moſt general, and the moſt indignant reſentment. Odious with private corruptions, and execrable with public crimes, he exhauſted the patience of an age accuſtomed to the moſt enormous profligacy. The jealouſy of his enemies, and the juſtice of his nation, called him to expiate, upon the ſcaffold, the murder of his ſovereign; and he aſcended it without the conſolation of one virtue. He had yet reconciled himſelf to heaven, from partialities that are natural to man; and he relied with an aſſured hope upon entering into a happy immortality in another exiſtence *. His burſts of repentance and remorſe were humiliating and inſtructive; and terminated with propriety the tenor of a life, which had never experienced the ſatisfaction and the tranſports of patriotiſm and probity.

* Crawfurd, Memoirs, Appendix, p. 23. Spotſwood,

THE

HISTORY

OF

SCOTLAND.

BOOK VII.

1581.

THE overthrow of Morton was an atchievement moſt acceptable to the nation; and the earl of Arran recounted with oſtentation the proceedings of his trial to the King, and the privy council. He explained the ſteps he had taken, and pointed out the ſources from which he had received his information; and while he took the liberty to acknowledge, that in order to reach the truth, he had ſubjected to torture many perſons who were either related to Morton, or dependent upon him, he requeſted that this behaviour ſhould not be imputed to him as a crime. His conduct and tranſactions were not judged to be criminal, by the privy council; and an act was even paſſed which pronounced them to be an important ſervice to the King, and the three Eſtates. The public voice, however, reprobated loudly the inhumanity of his practices; and it was ſuſpected that one of his reaſons for this free and unconſtitutional application of the rack, was to diſcover

The earl of Arran recounts to the King and the privy council his proceedings againſt the earl of Morton.

diſcover, and to poſſeſs himſelf of the treaſures of the earl of Morton*.

But while the earl of Arran was expoſing himſelf to reproach, by the violence of his public tranſactions, he excited a ſtill keener indignation in the people by the flagrant impropriety of his private demeanour. Before he had acquired the royal approbation, he had lived in the houſe of the earl of March, and had experienced his bounty. This nobleman had married Elizabeth Stuart, the daughter of the late earl of Athol; a woman not leſs remarkable for her beauty and graceful accompliſhments, than for immodeſty and capriciouſneſs. The earl of Arran violating the rules of hoſpitality, and the ties of gratitude, had engaged with her in an illicit commerce; and now that he had added to his conſequence by the removal of the earl of Morton, he ſcrupled not to allure her to abandon her huſband, and to apply for a legal ſeparation from him. Though ſhe was with child, the plea of impotency was objected to the earl of March. The conſiſtorial judges, unſcrupulous and corrupted, did not delay to pronounce the ſentence of divorce; and a few days after, ſhe was joined by connubial rites to the earl of Arran. The clergy, though infinitely ſcandalized by a ſcene, of which the infamy was ſo complicated, and ſo full, were looking towards the ſubverſion of epiſcopacy, and did not dare to proceed beyond the limits of a private aſtoniſhment and execration. No attempt was made to inflict any penance or cenſure upon the earl of Arran and his counteſs; and they were induſtrious, by exhibiting themſelves in public, to proclaim the victory they had obtained over modeſty, the decorums of civil life, and the laws†.

He marries the counteſs of March.

July.

* Spotſwood, p. 315.

† Johnſton, Hiſt. Rer. Britan. lib. ii.

Book VII.

1581. A parliament was ſummoned to aſſemble at Edinburgh in the month of October; and the King employed himſelf in the mean time in conferring honours upon his courtiers. The earl of Lennox, who had gained his fulleſt confidence and affection, was advanced to be duke of Lennox. Arran was inveſted in his earldom with a more than uſual ſolemnity. The earl of March was promoted to the earldom of Orkney. Lord Ruthven obtained the earldom of Gourie; and John lord Maxwel was created earl of Morton. But while James was indulging his appetite for favoritiſm, and his propenſity for profuſion, he was diſturbed by growing diſcontents between the duke of Lennox and the earl of Arran. The latter, giddy with proſperity, and conſulting his ambition, was earneſt to undermine the former, and to engroſs excluſively the direction of affairs. The duke of Lennox having obtained a pardon for the baron of Ferniherſt, who had been ſome years in exile in France, the earl of Arran objected in the ſevereſt terms to this lenity, as being in direct oppoſition to an oath which had been taken by the King's counſellors againſt the remiſſion of any crimes committed to his prejudice during his minority. He ſought with induſtry for other pretences of quarrel; and when the parliament aſ-

October. ſembled, he affected, as captain of the guard, to place thoſe who were moſt agreeable to him near the King's perſon, in violation of a privilege which belonged to the duke of Lennox as lord high chamberlain. The duke of Lennox diſdaining this inſolence, refuſed to attend upon the parliament; and the King taking a part in his reſentments, prohibited the earl of Arran from appearing at court. Arran, paying attention to the clergy and the people, was anxious to impreſs them with an idea of his attachment to the Reformation.

Promotions.

A rupture takes place between Lennox and Arran.

formation. He repaired regularly to church with his counteſs, to hear ſermons and prayers; he complained that the duke of Lennox was a determined enemy to the proteſtant intereſt; and he inſinuated that this nobleman had conſpired with France to re-eſtabliſh the doctrines and errors of the church of Rome. Theſe arts and ſuggeſtions did not paſs without notice; and the duke of Lennox found the ſuſpicions againſt him as a practiſer for the Houſe of Guiſe, and for popery, to revive with a force and credit that filled him with inquietude. The king was forward to reconcile his favourites; and the earl of Arran perceiving that the duke of Lennox could not be ſhaken in the royal eſteem, made a proper ſatisfaction to him for his rudeneſs. They were now mutually ſenſible of the advantages of their cordiality; and they prepared to exert themſelves with zeal to uphold their conſequence *. Book VII. 1581.

The parliament confirmed the promotions which had been made by the King; and the friends and adherents of the late earl of Morton being proſcribed as rebels, their eſtates were confiſcated †. The ſtatutes which favoured the eſtabliſhed religion were confirmed. Ordinations were made to root out and ſubvert the Roman catholic practices and doctrines; and while par- parliamentary proceedings.

* Spotſwood, p. 315. Johnſton, Hiſt. Rer. Britan. lib. ii.

† Archibald earl of Angus, Carmichael Younger of Carmichael, Hugh his ſon, James Douglas, prior of Pluſcardin, and Archibald Douglas of Pittendriech, natural ſons of the earl of Morton, George Douglas of Parkhead, James his ſon, Malcolm Douglas of Mains, Archibald Douglas conſtable of the caſtle of Edinburgh, and Hector Douglas, were forfeited for treating with the Engliſh to ſend an army to reſcue the earl of Morton, and for holding out the caſtles of Tantallon and Douglas. Archibald Douglas of Whittingham was alſo forfeited for theſe crimes, and for his concern in the murder of King Henry. Moyſe, p. 57, 58.

Book VII. 1581.

ticular and commodious enactments took place with regard to the coinage, and the execution of juſtice, ſome general regulations were framed, which are highly deſcriptive of the condition of manners and ſociety at this period. It was commanded that all perſons who ſhould be convicted of notorious adultery, ſhould incur the puniſhment of death. It was ordained that all thoſe who, from private revenge, ſhould maim or ſlay oxen and horſes, ſhould be puniſhed as thieves; and that thoſe who employed and maintained the perpetrators of ſuch deeds, ſhould be eſteemed to be equally culpable with them. The exceſs of coſtly apparel ‡, and the tranſportation of wool were prohibited. It was ordered that the people ſhould abſtain from ſuperfluous banquets, and from the uſe of ſpices and foreign delicacies *; and

‡ "It is ſtatute and ordained bee our ſoverſign lord, with "advice of his Eſtates and hail body of his preſent parliament, "that nane of his Hieneſs ſubjects, man or woman, being un-"der the degrees of dukes, earls, lords of the parliament, "knichtes, or landed gentlemen, that has or may ſpend of frie "yierly rent twa thouſand markes, or fifty chalders of victual "at leaſt, or their wifes, ſonnes or douchters, ſall after the "firſt day of May next to cum, uſe or weir in their claithing, "or apparel, or lyning thereof, onie claith of gold, or ſilver, "velvot, ſatine, damaſk, taffataes, or ony begairies, frenzies, "paſments, or brodarie of gold, ſilver, or ſilk: nor zite layne "cammerage, or wollin claith maid and broght from onie foreign "cuntries, under the pain of ane hundreth pundes of every "gentilman landed, one hundred marks of every gentilman "unlanded, and fourtie pundes of ilk zeaman for every day "that hee, his wife, ſonne or douchter tranſgreſſis this preſent "act." James VI. Parl. 1581, c. 113.

* "It is ſtatute and ordained, that no manner of perſons be-"ing under the degree of prelates, earles, lordes, baronnes, "landed gentilmen, or utheris that are worth and may ſpende "in yierlie frie rent, twa thouſand markes money, or fifty chal-"ders victuall, all charges deduced, ſall preſume to have at their "bridelles, or uther banquets, or at their tables in daylie "cheare, onie dropges or confectours, brought from the pairts "beyond ſea; and that no banquets ſal be at onie upſittings, "after

and it was enjoined that the nobles and landed gentlemen ſhould not forſake their own houſes and eſtates, nor the honeſt frugality of their fathers, to live in riot and idleneſs in towns and boroughs *. Book VII. 1571.

Mary, in the mean while, oppreſſed by the cloſeneſs and rigour of her confinement, felt her hopes to abate, and her health to languiſh. She had frequently applied to Elizabeth for a mitigation of her miſeries; but though promiſes of relief were often given to her, they were never realized. In a letter about this time to Caſtelnau, the French ambaſſador, ſhe complained that her body was ſo weak, and her limbs ſo feeble, that ſhe was unable to walk. Her only refreſhment, ſhe ſaid, was to be carried in a chair in the arms of ſervants. She begged him to repreſent her condition to her ſiſter, and to ſolicit for her the uſe of a coach, that ſhe might occaſionally take the air in ſhort excurſions from the caſtle of Sheffield. She intimated to him her deſire, that paſſports might be granted to the lord Seton and the lady Lethington, as ſhe wiſhed anxiouſly to have their ſociety and intercourſe; and the ſtate of her health, ſhe informed him, abſolutely required, that ſhe ſhould have the additional attendance of two women, and two men ſervants. Caſtelnau, who was affectionately devoted to her, did not neglect her injunctions. But though he urged the inclement ſtate of her health, her ſex, and her rank, and even ſought for topics of perſuaſion in The diſtreſs of the Queen of Scots.

" after baptiſing of bairns, in time coming, under the paine of " twenty pund to be paid by every perſon doer in the contrair, " as weil of the maſter of the houſe quhair the effect of this " act is contravened, as of all uther perſons, that ſall be found " or tried partakeris of ſik ſuperfluous banquettings, and eſcheit- " ting of the drogges and confectoures apprehended." James VI. Parl. 1581, c. 114.

* Stat. James VI. Parl. 1581. c. 99. 105. 110. 116.

Book VII. 1581.

the duties and ties of a common humanity, and in the reſpect that Elizabeth ought to pay to herſelf, his application and entreaties were ineffectual*.

Her apprehenſions for the titles of her ſon to the crown of England.

Struck with the ſavage rage, and the unrelenting vindictiveneſs of the Engliſh Queen, Mary thought of reſigning into the hands of her ſon, not only her rights to Scotland, but her claims to the crown of England; and ſhe even felt an inclination to counſel him to employ every effort in his power to eſtabliſh the latter, as preferable to thoſe of Elizabeth. But in her more ſerious and diſpaſſionate hours, ſhe was ſenſible of the danger of meaſures ſo violent; and being tormented with apprehenſions leſt any attempts ſhould be made to defeat altogether the titles and grandeur of her ſon, ſhe was ſeized with an earneſt deſire to have her own claims and his to England, recognized by the Engliſh parliament, in the event of the death of Elizabeth. For this end ſhe framed a memorial to be preſented to the Engliſh Queen, and her three Eſtates, preſſing to be heard by deputation on the ſubject of her titles and pretenſions. It was not, ſhe ſaid, upon her own account that ſhe was ſolicitous that a parliamentary declaration of her rights ſhould take place. Continual afflictions had advanced her life, and had brought upon her before their time the infirmities of old age. She could have no hope to ſurvive Elizabeth, and to ſway, in her own perſon, the ſceptre of the Engliſh nation. But the cares and the anxieties of a mother, induced her to be earneſt to preſerve and ſecure her titles to her ſon; and if her private contentment was an unavailing argument to produce the declaration about which ſhe intereſted herſelf, ſhe entreated that it might be granted from motives of policy; and ſhe deſcribed it as an expedient that would tend to the ami-

* Addit. aux Mem. de Caſtelnau, p. 519.

ty

ty and mutual intelligence of the two kingdoms, to their wealth, their ſecurity, and their greatneſs. This remonſtrance, however, or memorial, attracted not the notice of the court of England, any more than her application for a mitigation of the miſeries of her confinement. It had even the effect to give a new force to the jealouſies of Elizabeth, and to animate her in her habits of cruelty and vengeance*. Book VII. 1581.

The church, after the bold decree it had given againſt epiſcopacy, was inclined to proceed to the full eſtabliſhment of its purpoſes. Accordingly it ſoon after, in a general aſſembly holden at Glaſgow, gave an explicit and determined ſanction to the platform of eccleſiaſtical government, which had been drawn up by Mr. Andrew Melvil and his aſſociates. It was in vain that the Eſtate of the biſhops exerted themſelves in oppoſition to it. They were out-voted by a great majority; and the men of parity, or the admirers of the aſſembly of Geneva, gave diſtinction to this new model, or ſcheme of juriſdiction, by terming it "The ſecond Book of Diſcipline†." The order for its eſtabliſhment was ſimple and reſolute. It obſerved, that as travels had been taken for the regulation of the eccleſiaſtical government, and that as different applications had been made to the magiſtrates or the civil power for its approbation of them, without the effect which good men deſired, it was fit that the book of polity agreed on in ſeveral conventions of the church, ſhould be regiſtered in its acts, and remain there in perpetual preſervation; and that copies of it ſhould be taken up and attended to by every preſbytery‡. Eccleſiaſtical affairs. The ſecond book of diſcipline.

* Murdin, p. 367. 370. Addit. aux Mem. de Caſtelnau, p. 522. 525. † Collection of Confeſſions of Faith, vol. ii. p. 759. ‡ Acts of Aſſembly ap. Collect. of Confeſſ. of Faith, vol. ii. p. 807. Calderwood, p. 102.

While

Book VII.

1581.

The averſion of the clergy to epiſcopacy.

While the paſſions of the clergy were under a ſtrong ferment and agitation, the ſee of Glaſgow became vacant by the death of Mr. James Boyd. Though the clergy had given a decree againſt epiſcopacy, the court was by no means diſpoſed to ſubmit to their judgment. The duke of Lennox recommended to the vacant biſhopric, Mr. Robert Montgomery miniſter at Stirling. This perſon had been a ſtrenuous declaimer againſt the epiſcopal Eſtate. He yet accepted the prelatical dignity; and for the yearly ſum of one thouſand pounds, he agreed to convey the lands and revenues of his ſee to the duke of Lennox. The clergy waving an inquiry into this ſimoniacal bargain, preſſed directly to the point that was moſt offenſive to them. They charged Montgomery with his preſumption in accepting a biſhopric. An intimation was communicated to them upon the part of the court, that as epiſcopacy had not been aboliſhed by the three Eſtates, no accuſation could lie againſt Montgomery for his aſpiring to the epiſcopal order. They anxiouſly ſcrutinized into his life, converſation, and opinions; and ſome trifling miſcarriages being proved againſt him, he was admoniſhed to continue in his miniſtry at Stirling, and to drop all thoughts of his biſhopric, under the pain of excommunication. Diſregarding their admonition, he cited the chapter of Glaſgow to convene for his election. Offended at this contumacy, the brethren charged him to preſent himſelf before the ſynod of Lothian, to hear the ſentence of excommunication pronounced againſt him. An order from the King diſcharged the ſynod from proceeding to this extremity. The ſynod, intimidated by this mandate, paid a due obedience to it; but Mr. Robert Pont and ſome other miniſters, entered a proteſtation, that the cauſe being eccleſiaſtical, the King and his council

council had no juriſdiction or concern in it. A general aſſembly met ſoon after at St. Andrews, and called Montgomery before them. Mr. Mark Ker, the maſter of requeſts, delivered to it a letter from the King, containing a prohibition againſt any farther perſecution of the biſhop. Mr. Andrew Melvil informed the maſter of requeſts, that they would not touch upon civil matters; but that they were entitled to exerciſe a power over the members of the church. A meſſenger at arms now appearing, commanded them to deſiſt under the penalty of rebellion; and Montgomery appealed from them to the King and council. The aſſembly, however, unintimidated and obſtinate, took the caſe into their conſideration, and pronouncing the ſentence of excommunication againſt Montgomery, caſt him forth from the church. The king reſenting this behaviour, declared their excommunication to be void, and ordered Montgomery to go to his dioceſe, and to perform his functions as a biſhop. The clergy in an agony of diſappointment and vexation, enjoined the obſervation of a ſolemn faſt, to avert from the land the vengeance of heaven; and they detailed, as its cauſes, the abundance of ſin, the oppreſſion of the church, the delapidation of its revenues, and the danger which threatened the King from the company of wicked counſellors, who were induſtrious in corrupting his principles of religion, and his integrity *.

BOOK VII. 1582.

The pulpits reſounded with the diſcontents of the clergy; and all the grievances of which they complained were imputed openly to the duke of Lennox. They affected to conſider the government of the kingdom as overturned, and exhorted the people to guard againſt the evils of deſpo-

They declaim againſt the government.

*Johnſton, Hiſt. Rer. Britan. lib ii. Spotſwood, p. 316. 318.

tiſm,

Book VII. 1582.

tiſm. They charged the court with hoſtility to the proteſtant intereſt, with uſurpations upon the ſpiritual power, and with an intention to pull the crown from the head of Chriſt, and to wreſt the ſceptre out of his hand. James finding it neceſſary to check this ſpirit of outrage, determined to make an example of John Drury, a preacher, who had diſtinguiſhed himſelf by the impudence of his zeal. Amidſt the infinite indignation of the clergy, this offender was prohibited from preaching, ſeparated from his flock, and baniſhed from the capital *.

The critical ſituation of affairs.

Nor were the paſſions of the clergy the only or the chief ſource of confuſion which now diſturbed the kingdom. Reſigning himſelf to his favourites, James ſeemed deſirous to govern by their ſole direction and authority. They had impreſſed him with extravagant notions of prerogative, and he paid no proper attention to his privy council. The earl of Arran was univerſally conſidered as an unprincipled inſtrument to forward and undertake ſchemes of outrage and miſchief. The duke of Lennox was ill informed, and his zeal for the King precipitated him into dangerous and violent courſes. As lord high chamberlain he had ventured to hold airs or courts; reviving a juriſdiction which had been long unknown, and proceeding to new and inſolent enormities. His connections with France, and his reverence for the duke of Guiſe, did not recommend him to the nation. He was paſſionately deſirous to advance the intereſts of Mary; and it was his purpoſe to procure her aſſociation with her ſon in the government. While the adminiſtration, accordingly, of the favourites was offenſive in general to the ambition of the nobility, it was alarming in a particular degree to thoſe among them who had acted

* Spotſwood, p. 320.

againſt

againſt the Queen. The fate of the earl of Morton was recent; and if Mary ſhould again be inveſted with power, it was natural to conclude, that ſhe would puniſh her enemies*. Book VII. 1582.

Elizabeth obſerved with pleaſure the troubles of Scotland, and employed herſelf with aſſiduity to encourage them. She was anxious to regain that dominion over it, of which ſhe had been deprived by the fall of the earl of Morton; and ſhe hated the duke of Lennox and the earl of Arran as in hoſtility to her intereſts. They had been buſy to alienate from her the affections of James; and ſhe was convinced that they would engage him in deſigns to her prejudice. Though ſhe could withhold Mary from being aſſociated with him in the government, ſhe could not prevent her from reſigning to him her titles and pretenſions of every kind. He was of an age to match with a foreign princeſs. The terms in which ſhe ſtood with the Roman catholic powers, were doubtful and precarious; and ſhe was aſſuredly advertiſed by her ambaſſador at Paris, that the duke of Guiſe was practiſing anxiouſly in ſecret for the deliverance of the Queen of Scots. Impatient and apprehenſive, ſhe gave encouragement to the Scottiſh malcontents; and a conſpiracy was formed, of which it was the meaning to hold James in captivity, and to overthrow the duke of Lennox, and the earl of Arran †. Elizabeth encourages the diſtractions of Scotland.

The chief actors in this conſpiracy were the earls of Gowrie, Marre, and Glencairn, the lords Lindſay and Boid, with the maſters of Glammis and Oliphant. The King ſet out for the county of Athol, to take the amuſements of hunting and hawking; and they were careful to accom- The Raid of Ruthven.

* Digges, p. 428. Digges, p. 326. 427.

† Camden, p. 488, 489.

pany

Book VII. 1582.

pany him. The Duke of Lennox was at his palace of Dalkeith; the earl of Arran was at his ſeat of Kinneil; and the principal members of the privy council were preparing to hold juſtice courts in different quarters of the kingdom. Between Dunkeld and Stirling, the earl of Gowrie, affecting hoſpitality and kindneſs, allured the King to paſs a night at his caſtle of Ruthven. His vaſſals were ready upon a call, and in arms. The King, unſuſpicious of any danger, complied with his invitation; and in the morning, when he diſcovered an anxiety to renew the ſports of the field, the conſpirators entering his apartment, preſented him with a remonſtrance, in which they accuſed the duke of Lennox and the earl of Arran as the authors of oppreſſions and wrongs which could not be endured, and which tended to the ruin of the commonwealth, and the ſubverſion of the proteſtant religion. James received their remonſtrance with a reſpect mingled with ſurprize, and was more earneſt than before to take his departure. The maſter of Glammis ſtopt him at the door of his apartment. He gave way to paſſion and menaces. His agitation and his ſpeeches did not move the conſpirators. He broke out into tears. "It is better, ſaid the "maſter of Glammis, that children ſhould weep "than bearded men *." This contempt was more afflicting to him than their treaſon. He felt that he was a priſoner, and that he was no longer a King †.

23 Auguſt.

The perplexity of the duke of Lennox upon the impriſonment of the King.

It was with the greateſt amazement that the duke of Lennox heard of the ſurprize of the King at Ruthven. He diſpatched ſome perſons of rank to inquire into his condition. The King by this time had been carried to Perth; and they

* Spotſwood, p. 320. † Calderwood, p. 129, 130. Melvil, Memoirs, p. 258.

were

were admitted to him in the preſence of the conſpirators. He called out to them that he was a captive; and the conſpirators, after urging him to retract what he had ſaid, proteſted that they would not oppoſe his liberty for one moment, if ſecurity were given to them that the duke of Lennox and the earl of Arran, ſhould not be permitted any longer to oppreſs the church and the ſtate. Upon this report of his meſſengers, the duke of Lennox collected forces for the reſcue of his ſovereign. The conſpirators, in the mean while, overawing the King, made him iſſue a proclamation, in which he declared that he was perfectly maſter of his perſonal liberty; and that it was his pleaſure that no troops ſhould be levied under the pretext of delivering him from conſtraint, or captivity. The duke of Lennox, notwithſtanding, continued to allure ſoldiers to his ſtandard; and while his hopes of marching againſt the conſpirators with a powerful body of men were very ſanguine, a letter from the King commanded him peremptorily to depart out of Scotland. Aſtoniſhed and diſconcerted, he deliberated with his friends upon the part which it became him to act; and adopting their advice, he retired to Dunbarton caſtle, where he might watch the turns of fortune, and from whence, if the neceſſity of his affairs required it, he might effect an eſcape from his enemies by embarking for France *.

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He is commanded to leave the kingdom.

When the earl of Arran received intelligence of the Raid of Ruthven, he put himſelf at the head of a body of horſemen. His impatience and impetuoſity were extreme; and giving it in charge to William Stuart his brother, to march his followers by the great road to Ruthven caſtle, he himſelf confiding in the friendſhip of the earl

The earl of Arran is committed to cuſtody.

* Spotſwood, p. 321.

of

Book VII. 1582. of Gowrie to whom he was allied, haſtened to it by the neareſt paths. The earl of Marre encountering William Stuart, took him priſoner, and diſperſed his horſemen with conſiderable ſlaughter. The earl of Arran preſenting himſelf at Ruthven caſtle, demanded to be conducted to the King. The indignant conſpirators were about to conſult their fury, and to diſpatch him with their ſwords. But Gowrie interpoſing in his behalf, conjured them not to diſhonour themſelves by a deed ſo paſſionate and ſo unwarrantable. He was committed a cloſe priſoner during the night to a chamber in the caſtle; and in the morning was conducted to Duplin houſe. He was afterwards guarded in the caſtle of Stirling; and the reſentments of the conſpirators abating, they then ordered him to confine his reſidence to his ſeat of Kinneil *.

Ambaſſadors arrive from England. 12 Sept. The conſpirators, taking the appellation of "lords for the reformation of the ſtate," eſcorted the King to Stirling with a formidable retinue. Here Sir Henry Carey and Sir Robert Bowes were introduced to him as ambaſſadors from England. They were inſtructed to profeſs publicly the greateſt friendſhip for him in the name of their miſtreſs; and in ſecret to flatter the conſpirators with her warm approbation, and with ample promiſes of her protection and countenance. Nor did they neglect the inſidious objects which were entruſted to them. The amity of Elizabeth was held out in the moſt flattering terms. They declaimed with ſignal aſperity againſt the pernicious counſels of the duke of Lennox and the earl of Arran, congratulated the King upon his deliverance from them, and extolled the Raid of Ruthven as founded upon motives of patriotiſm. They were alſo earneſt in

* Melvil, Memoirs, p. 265.

entreating

entreating the King to extend his clemency to the earl of Angus, who upon the downfal of his uncle the earl of Morton, had taken refuge in England; and who, it is probable, had been acting in concert with the conſpirators. James was not ſo deficient in penetration, as not to perceive that the Queen of England had a ſhare in the enterprize which had been executed againſt him; but he prudently made polite returns to their ſpeeches; and in the hope that his kindneſs to the earl of Angus might be a foundation of favour for the duke of Lennox, he freely pardoned all the tranſgreſſions of that nobleman. The earl of Angus, accordingly, returned ſoon after to Scotland, and took poſſeſſion of his caſtle of Tantallon, on the condition of reſtoring it to the King upon his mandate *. Book VII. 1582.

From Stirling the King was conducted to Edinburgh; and the lords reformers now iſſued a laborious manifeſto in vindication of their enterprize. They forgot not to urge in their defence, the ſervice they had done to the proteſtant intereſt, by the humiliation of the duke of Lennox; and as an aſſembly of the church was at this time holding its conventions, they applied to it for its approbation of their proceedings. The clergy, taking into conſideration not only the dangers which threatened the eſtabliſhed religion, but thoſe which affected the commonwealth, deputed three perſons of their number to explain their ſentiments to the King, and to confer with him upon the hazardous ſtate of public affairs. The King, temporizing with their commiſſioners, allowed that indirect courſes had been taken to overturn the proteſtant faith, and that abuſes had been committed againſt the conThe clergy juſtify the Raid of Ruthven.

* Johnſton, Hiſt. Rer. Britan. lib. iii. Spotſwood, p. 321.

Book VII. ſtitution and the laws. Fortified with theſe conceſſions, the clergy made a ſolemn act, in which they declared the Raid of Ruthven to be a ſervice moſt acceptable to all who feared God, who reſpected the true religion, and who were anxious for the preſervation of the King's perſon, and the proſperous ſtate of the realm. Not contented with this unlimited approbation of the conſpirators, it was enjoined by the aſſembly, that every miniſter ſhould harangue from his pulpit upon the expediency and the benefits of their enterprize; and that he ſhould exhort the people to concur with them in proſecuting the full deliverance of the church, and the perfect reformation of the commonwealth *.

1582. 23 October.

It is approved by a convention of the three Eſtates.

The conſpirators, though pleaſed with the popularity they derived from the favour of the church, were not ſatisfied with its approbation. They were ſolicitous to ſkreen themſelves from danger by obtaining the ſanction of the three Eſtates. A convention of the Eſtates accordingly was aſſembled; and in conſequence of their arts they were able to manage it. The King addreſſing himſelf to the parliament informed them, that the diſtraction of the nobility was the greateſt trouble he had encountered ſince his acceptance of the government; and that he had called them together to entreat a remedy to this grievance from their counſel and authority. The friends of the conſpirators indulged themſelves in violent declamations againſt the duke of Lennox and the earl of Arran; and it was their purpoſe to demonſtrate, that unleſs the Raid of Ruthven had taken place, the religion and the commonwealth muſt have been actually overturned. The earls of Gowrie, Marre, and Glencairn, who were the moſt conſiderable actors in that enterprize, ſtood

* Calderwood, p. 131. 133. Spotſwood, p. 322.

up;

up; and after having aſſerted that their motives of action were honourable and patriotic, they ſubmitted themſelves to the cenſure of the King and the three Eſtates. The convention did not deliberate long upon their conduct. It declared that what had been done by them and by their aſſociates was a good, a thankful, and a neceſſary ſervice to the King and to the realm; and it enacted, that no ſuit, civil or criminal, of any kind, ſhould be ever inſtituted againſt them *.

The duke of Lennox leaves Scotland.

From the reſolute ſpirit of the conſpirators, the duke of Lennox perceived that it was in vain for him to expect their favour. After repeated orders had been ſent to haſten his departure from Scotland, he abandoned the caſtle of Dunbarton, and embarked for France. But falling ſick at ſea, and being detained by contrary winds, the King adviſed him to take his way through England, and recommended it to him to remain at Blackneſs till a ſafe-conduct could be procured from Elizabeth. This advice was very agreeable to him; and at Blackneſs he began to flatter himſelf with hopes, that the King would at length make an effectual effort to his advantage. A rumour went abroad, that he was about to be reeſtabliſhed in power. The conſpirators alarmed with his delays, diſpatched the lord Herries to command him inſtantly to enter upon Engliſh ground. He earneſtly ſolicited that he might ſee the King, and bid him an adieu; but no regard was paid to his entreaties. In the dominions of Elizabeth he was received with attention; and when he preſented himſelf in the court of that princeſs, ſhe gently rebuked him for his errors in the adminiſtration of the Scottiſh affairs. He ſoon after arrived in France, where he died of a

* Spotſwood, p. 323.

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dyſentery. A few hours before he expired, he was viſited by two prieſts of the Romiſh communion; but he rejected their ſervices, and acknowledged himſelf to be a proteſtant. James who had loved him with an entire affection, lamented ſincerely his misfortunes and death; and taking the charge of his children, was laviſh to them of his kindneſs and generoſity *.

Mary addreſſes a very ſpirited letter to Elizabeth.

When the intelligence of the captivity of her ſon, and of the bold proceedings of the conſpirators, reached Mary, her cares, agitation, and anguiſh were driven to the moſt affecting extremity; and giving a vent to her ſenſibilities, ſhe addreſſed a letter to Elizabeth, in which ſhe maintains her dignity while ſhe yields to her reſentments; and in which ſhe has intermingled, in an admirable manner, the moſt fervent proteſtations of innocence, and the boldeſt language of expoſtulation and reproach. Its ability and vigour are uncommon, and give it a title to ſurvive in the hiſtory of the Scottiſh nation.

"Madam,

"I am informed from undoubted authority, "that my ſon has been ſurprized by rebels; and "I am tortured with apprehenſions, leſt he ſhould "be reduced to the peculiar infelicities of that "ſituation under which I have ſuffered ſo long. "It is not in my power to ſuppreſs my indignation "and my feelings; and while I deſire that my "complaints ſhould be engraved upon your me-"mory, it is my wiſh, that they may live for "ever, and illuſtrate the miſery into which I have "been brought by the injuſtice and cruelty of "my enemies. But, ſince their devices and prac-"tices, however criminal and wicked, have ſtill "obtained your credit and ſupport in preference "to my juſt and ſincere remonſtrances, and ſince

* Johnſton, Hiſt. Rer. Britan. lib. iii. Spotſwood, p. 324.

"equity

" equity and right muſt ſtoop to the tyranny of " your ſceptre, I ſhall carry my appeal to the " eternal God, whoſe dominion is over all the " princes of the earth. To him with whom " there is no craft or fraud I lift up my voice, " beſeeching him to deal with us both, at the " laſt judgment, according to our deſerts. Se- " cure in my innocence, I fear not to reſt ſo- " lemnly my fate upon this impartial trial; and " to look with ſcorn to the arts which my adver- " ſaries have employed to ruin my reputation, " and to impute merit to themſelves. In the " name of the Almighty God, and as in his im- " mediate preſence, at the foot of his throne, I " charge you to recollect, that by your ſpies, " your agents, and your ſecret intrigues, you cor- " rupted my ſubjects, excited them to revolt, " and were the ſpring and ſource of all my moſt " cruel afflictions. The confeſſion of the earl of " Morton, amidſt other teſtimonies which are " known and public, is a moſt remarkable vouch- " er of this accuſation. His rebellion procured " him your friendſhip and confidence; and your " power made him a Regent. If you had ab- " ſtained from aſſiſting my rebellious ſubjects, " and if he had been left to the laws, I ſhould " not have experienced ſuch extremity of diſ- " treſs, and my government would not have been " overturned.

" Nor is it ſolely or chiefly to your connections " with the earl of Morton and his faction, that I " can confine my complaints. When I was in " the priſon of Lochlevin, Sir Nicholas Throg- " morton, your ambaſſador, adviſed me in your " name, to ſubſcribe a reſignation of my king- " dom. This deed, he affirmed, was invalid; " and the whole world would have concurred in " treating it with deriſion, if you had not af-

Book VII. 1582. "forded my enemies your countenance, opened "to them your exchequer, and put your armies "in motion to protect them. Conſult, Madam, "your conſcience. If theſe liberties ſhould be "taken with yourſelf, could you, conſiſtently "with ſincerity and honour, beſtow upon them "your approbation? You dare not anſwer this "queſtion in the affirmative; and you cannot "deny, that the methods I deſcribe operated my "degradation from royalty, and advanced my "ſon, though an infant, to the government of "my kingdom. It was afflicting to me, that my "ſon ſhould be an uſurper, even by compulſion; "and of late, when I was diſpoſed to make him "a legal ſovereign, by reſigning to him my "rights, he was ſeized upon by traitors, and his "greatneſs and his life are ſtill at their diſcre-"tion.

"After that I had eſcaped from Lochlevin, "and was about to give battle to my rebellious "ſubjects, I diſpatched to you, by expreſs, the "diamond which you ſent me as a token of your "love; and I craved your aid. I thought that "what I had received as a pledge of your affec-"tions would awaken them; and when you be-"ſtowed it, I was not only flattered with large "promiſes of your aſſiſtance; but you even bound "yourſelf by your royal word, that if I ſhould "betake myſelf to your dominions, you would "advance to your frontiers and meet me in per-"ſon. I fondly relied upon your honour; and, "in my adverſity, I took the reſolution to throw "myſelf into your arms, and to commit to your "protection my diadem, and my perſon. But I "was rudely ſtopped upon my journey, encom-"paſſed with guards, and confined in ſtrong "places; and from the firſt moment of my cap-"tivity to the preſent hour, I have endured af-

" flictions more bitter and grievous than death " itſelf. Book VII. 1582.

" I know that you will be ready to object to " me my connections with the duke of Norfolk. " But in my negociations with him I poſitively " aver, that no hurt or prejudice was intended to " you, or to your kingdom; and the chief no- " bles of your council approved of them. They " even confirmed their concurrence by the ſo- " lemnity of their ſubſcriptions; and they aſſured " me, that they would procure your conſent to " the alliance about which they were ſo anxious. " Now I beg you to conſider, whether it be poſ- " ſible that men of the higheſt rank, and your " prime miniſters, could ſeriouſly have thought " of alluring you into a meaſure, that would " have deprived you of your honour, your crown, " and your life? You have been pleaſed indeed " to draw this concluſion, and to inſiſt upon it; " but I muſt obſerve, that the premiſes and the " inference are in the moſt direct contradiction " and hoſtility.

" When ſome of my rebellious ſubjects allow- " ed themſelves to reflect with candour upon the " precipitation and the turpitude of their pro- " ceedings againſt me, they were filled with ſur- " prize and ſhame; and when the conferences in " England explained to them beyond the poſſi- " bility of a doubt, the barbarous inhumanity, " and the unrelenting malignity of my adver- " ſaries, they returned with ardour to the line of " their duty. This change in their behaviour " was moſt offenſive to you. An army marched " from England to chaſtiſe them for renouncing " their practices of injury and rebellion. The " Caſtle of Edinburgh was beſieged; and two of " them whoſe diſtinction was moſt eminent, were " ignominiouſly put to death, the one by poiſon,

Book VII. 1582. "and the other by the halter *. I had yet at "this very time diſpatched, upon your requeſt, "repeated orders to them to lay down their arms, "and to prepare for a laſting accommodation. "Have you the courage to do juſtice to yourſelf "and to me; and putting your hand to your "heart, can you ſay, that the intentions you ex- "preſſed for an accommodation and for peace, "were ſincere and upright?

"I was now determined to reſign myſelf to "my captivity, and to try if ſubmiſſion and pa- "tience could procure me any comfort or eaſe. "But my expectations were deluſive. The "wretchedneſs of my eſtate inſtead of ſuffering "a mitigation has been augmented. Twelve "tedious months have paſſed ſince all communi- "cation between my ſon and me either by letters "or meſſengers has been interrupted. You are "ſtudious to tear aſunder the neareſt and the "kindlieſt ties of nature, and to ſeparate and "divide a mother and a ſon.

"Conditions for our amity and concord have "been often propoſed. But notwithſtanding my "anxieties for a friendly and perpetual eſtabliſh- "ment of our affairs, you have uniformly pre- "vented it. Your ſcruples were infinite; and "your negociations were induſtriouſly drawn into "length. My actions and endeavours were miſ- "interpreted, my ſincerity was diſhonoured by "ſuſpicions, and my concerns were oppoſed by "artificial delays and difficulties. My forbear- "ance and misfortunes ſerved as a precedent for "future hardſhips; and it ſeemed that you had "acquired a right by preſcription to treat me "with inhumanity. My rank and quality are "altogether diſregarded; and the uſage I receive "would be hard and unbecoming to a ſlave. I

* Lethington and Grange.

"cannot

" cannot poſſibly ſupport it much longer; and
" you cannot ſurely be ambitious to be conſider-
" ed as the author of my death. In kindneſs to
" yourſelf take an early opportunity to ſhow me
" ſome compaſſion; permit me before I die to
" expoſe the wicked contrivances, and the cruel
" calumnies of my enemies; and do not refuſe
" to me the ſlight conſolation of paſſing the ſhort
" remainder of my life in tranquillity and
" peace.

" To take away every foundation of diſpute
" and miſunderſtanding betwcen us, I invite you
" to examine into every report againſt me, and
" to grant to every perſon the liberty of accuſing
" me publickly; and while I freely ſolicit you
" to take every advantage to my prejudice, I only
" require your permiſſion to defend myſelf, and
" that I may not be condemned without a hear-
" ing. The vileſt malefactor and priſoner is al-
" lowed to plead againſt the indictment, and to
" confront the witneſs. With what juſtice then
" is this privilege denied me who am an anointed
" Queen, your near relation, and the next heir
" of your crown? Theſe circumſtances aſſuredly
" are moſt powerfully in my favour. They may,
" notwithſtanding, be the great cauſe and princi-
" ple of the reſentments of my enemies. Alas!
" my blood and my titles need not diſturb them.
" I appeal to God and to my conſcience, that for
" this long period I have not thought of any
" kingdom but that of Heaven. Yet while I
" fix my happineſs beyond the grave, I conjure
" you by every ſanction of equity, kindred, and
" religion, to preſerve inviolate, after my death,
" the claims and pretenſions of my ſon, and not
" to advance by any encouragement, the devices
" and machinations of thoſe, who both in Eng-
" land

Book VII. 1582. "land and Scotland, are ſo aſſiduous in plotting "the deſtruction of me and mine.

"Is it fair or reaſonable, that I who am a mo- "ther, ſhould be reſtrained not only from giving "counſel to my ſon, but that the diſtreſſes of "his condition ſhould be artfully concealed from "me? You have actually interfered in his af- "fairs; and if you had intended his ſervice, it "would not ſurely have been any prejudice to "your ſincerity, or have argued any diſreſpect of "him, if you had made me the confident of "your purpoſes, and had done me the favour to "aſk my advice. From your myſterious cloſe- "neſs and ſilence, what am I not to conjecture "and to fear? Let me intreat you to interpoſe "no farther in his concerns without my concur- "rence, or without conſulting the King of "France. Regard, as traitors, thoſe who hold "him in captivity, and compel him to liſten to "their dictates; and let me beſeech you by the "croſs and the paſſion of Chriſt our redeemer, "that you will bind to yourſelf, him and me in "everlaſting gratitude, by permitting me to re- "freſh my decayed body ſomewhere out of Eng- "land, after the languors of ſo long and ſo pain- "ful a confinement. I will never ceaſe to im- "portune you with this requeſt; and to you "alone, I ſhall impute all the good or the ill "that awaits me.

"To me this world has loſt its greatneſs; and "if a priſon is ſtill to be my lot, if I am to "know no joy on earth, do not interrupt and "oppoſe me in my hopes of heaven. Let me "have a catholic prieſt to direct me in the road "to another life, and to perform to me the offi- "ces of that religion, in which I have lived, "and in which I am to die. This charitable "duty is never denied to the meaneſt of all hu-

"man

"man creatures. The ambaſſadors of foreign princes are freely indulged by you in the exerciſe of their religious tenets and diſcipline; and upon this head I gave the fulleſt toleration to my ſubjects. If, however, you are to reject this ſuit, I truſt, that I ſhall obtain pardon in the ſight of God; but I fear your perſecution of me will not eſcape unpuniſhed; and even when conſidered with a view to your temporal advantage, its impropriety is moſt apparent. For it may provoke the Roman catholic princes to treat their proteſtant ſubjects with oppreſſion and rigour.

"I am deeply ſenſible, that your counſellors are my determined foes, and that they are indefatigable in influencing you againſt me. Turn, I entreat you, your candid attention to their practices. Do not ſhut your eyes while they employ themſelves in the ruin of my ſon and me. It is not impoſſible, but that their purpoſes tend to an extremity that is far more intereſting to you. Our humiliation may be only the prelude to yours. Reaſſume the natural kindneſs of your diſpoſitions, ſoften your diſpleaſure to a princeſs who is ſo nearly related to you in blood, attend at length to my juſt complaints, let a tender reconciliation take place between us, let not the groans and ſighs of my afflicted ſoul aſcend any longer unto God, and let me depart in peace from this ſcene of ſorrow.

"I am,
"Your neareſt, and
"moſt diſconſolate kinſwoman,
"and affectionate ſiſter,
"MARY, Queen."*

* Camden, p. 489. Jebb. vol. ii. p. 266.

It

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1582.

Elizabeth opens a deceitful negociation with the Queen of Scots.

It was with the greateſt agitation and uneaſineſs that Elizabeth peruſed this letter. Her reſentments and her ſpirit of revenge were confirmed and ſtrengthened in their obſtinacy; and ſhe was not moved to commiſerate the condition of the Scottiſh Queen. She affected, notwithſtanding, the ſemblance of lenity; and ſhe diſpatched to Sheffield, Robert Beale, one of the clerks of her privy council, with inſtructions, that after having remonſtrated to Mary upon the aſperity of her complaints, he ſhould, with the aid of the earl of Shrewſbury, treat with her about her liberty, and her aſſociation with her ſon in the government of Scotland. Mary, who was not deſtined to receive any offer of comfort, but in a cup of poiſon, was inclined to accede to any terms that Elizabeth would dictate. Her facility was ſo compliant, that upon the return of Beale, Elizabeth thought it prudent to direct her privy counſellors to deliberate concerning the conditions upon which it would be proper to releaſe her from captivity. It was the reſult of their debates and ſcrutiny, that Mary, in the event of her liberty, ſhould engage not to attempt any enterprize prejudicial to Elizabeth, or to England; that ſhe ſhould acknowledge that whatever had been done by her huſband Francis II. againſt Elizabeth, was without her conſent, and contrary to juſtice; that ſhe ſhould ratify the treaty of Edinburgh, and ſhew her diſlike of all the machinations againſt England to which ſhe had been privy, by an ingenuous diſcovery, and a total renunciation of them; that inſtead of foſtering directly or indirectly any contrivance againſt the Engliſh government, ſhe ſhould conſider and oppoſe its plotters as public enemies; that ſhe ſhould abſtain from preferring any claim of right to the kingdom of England during the life of Elizabeth,

beth, and ſhould ſubmit, upon her deceaſe, to refer the title of ſucceſſion to the judgment of the parliament of England; and that to deſtroy all pretence of prevarication, and every occaſion for affirming in any future period, that ſhe had complied with theſe terms as a priſoner, and by conſtraint, ſhe ſhould not only ſwear to ratify them herſelf, and give hoſtages for their performance, but procure their confirmation by the three Eſtates of Scotland, and by the oath and writing of the King her ſon *. Theſe conditions for the liberty of Mary, were hard, humiliating, and cruel; and as they depended not entirely upon herſelf, Elizabeth might ſtill, with great eaſe, raiſe up obſtacles to oppoſe and defeat a negociation in which ſhe was not ſincere. The point of the aſſociation of the Queen of Scots with her ſon in the government of Scotland, was not examined by the privy counſellors of Elizabeth. It was propoſed that this matter ſhould be referred to James and to the Scottiſh parliament. This was another ſtroke of policy in Elizabeth. For the nobles who had ſeized upon James, and who directed his adminiſtration, were her friends, and were not only infinitely hoſtile to the aſſociation of Mary with her ſon, but even to her deliverance from captivity †.

The death and character of Geo. Buchanan.

This year, ſo afflicting to Mary, was the laſt in the life of Buchanan; and his ability, his virtues, and his demerits, are too conſpicuous to be paſſed without notice. Afflicted with the ſtone, and preſſed down by the infirmities of old age, he felt the approaches of his diſſolution, and prepared for it like a philoſopher. He reſigned his employments, and tired of the living, waited with reſignation for the moment that was to num-

* Camden, p. 491. † Johnſton, Hiſt. Rer. Britan. lib. iii.

ber

Book VII. 1582. ber him with the dead. At Edinburgh, in the ſeventy ſeventh year of his exiſtence, on the twenty eighth day of September, a little paſt five o'clock in the morning, his ſpirit took its flight. The envy that attends on eminence, and the bitterneſs that fills the heart of an enemy, are commonly extinguiſhed when their object is removed. But Buchanan was purſued with reproaches while in his grave. Many writers have deſcribed him as a monſter of impiety, as habitually beſotted with wine, and as deluded with women *. It is impoſſible to give any credit to the vileneſs of calumny; and it were equally vain to yield without reſerve to the heated admiration of panegyriſts. Sir James Melvil, whoſe political ſentiments were different from his, has done him the juſtice to declare, that he died a ſincere member of the reformed church †. In paſſing from the errors of popery, he diſcovered not, indeed, the flaming zeal of a convert; and his moderation was the effect of his wiſdom. A ſuperſtitious grimace was no part of his character; and to a perſon of his uncommon endowments, it would be an error to impute the moſt ſcrupulous adherence to every tenet in any popular faith. His life was liberal like his opinions. From the uncertain condition of his fortune, or from his attachment to ſtudy, he kept himſelf free from the reſtraint of marriage; but if a judgment may be formed from the vivacity of his temper and the wantonneſs of his verſes, he was no enemy to beauty and to love, and muſt have known the tumults and the languors of voluptuouſneſs. Violent in his nature, he embraced his friend with ardour, and indulged in the play of the ſocial affections. Proud of mental ſuperiority he was prone to treat with contempt men of high rank, whoſe chief or

* See Bayle, art. Buchanan. † Memoirs, p. 250.

only

only recommendation was their birth or their riches. Againſt his enemies he was animated with an atrocity of revenge. A malignant keenneſs glanced in his eye; and the perſecutions of prieſts, and the oppreſſions of misfortune, ſerved to augment the natural fretfulneſs of his diſpoſition, and gave an edge to his ſpleen. His converſation was gay, ingenious, and ſatyrical. When he was poſſeſſed of wealth, there were no bounds to his prodigality; when in want, he ſubmitted to little arts to procure the means of expence; and being careleſs of the future, he made no proviſion for the ſeaſon of dotage and helpleſſneſs. His money and his life terminated in the ſame moment. He was rather low in ſtature; of his dreſs he was negligent; and his external appearance bore no marks of the cultivation of his taſte. Yet in the ſlaviſh occupations of a pedagogue, in which he paſſed the better part of his days, he had contracted no pedantic impertinence*. No meanneſs of ſituation could deſtroy the greatneſs of his mind. He paſſed with propriety from the ſchool to the cabinet, and felt himſelf alike a ſcholar and a courtier. In poetry, he was deemed unrivalled by his contemporaries. He is more nervous, more various, more elegant than the Italian poets. He has imitated thoſe of Rome with greater grace and purity. His pſalms, in which he has employed ſo many kinds of verſe, diſplay admirably, the extent and univerſality of his mind, the quickneſs and abundance of his fancy, and the power and acuteneſs of his judgment. In hiſtory, he has contended with Livy and Salluſt. The chequered ſcenes of his life had given him a wide experience of the world, and he was naturally of a thoughtful diſpoſition. He treats accordingly the tranſactions of men with

* Thuanus, Hiſt. ſui Temp. lib. lxxvi.

great

BOOK VII. 1582. great prudence and diſcernment. In the preciſion and exactneſs of his narration he is not equally ſucceſsful. Minute facts too often eſcape his attention; and important ones do not always receive from him that niceneſs of examination, and that fulneſs of detail which they merit. Of ornament he is more ſtudious than of truth; and the fables which diſgrace the earlier portions of his hiſtory, are not more diſguſting than the partiality with which he records the events of his own times. A love of liberty, and a reſpect for the beſt intereſts of mankind, pervade and illuſtrate his work; but his admiration of tyrannicide, and his contempt of royalty, betray a propenſity to licentiouſneſs and faction. His learning is admirable; his penetration better than his learning. The vigour of his mind, the intereſt of his manner, the dignity of his narration, the deepneſs of his remark, the purity of his diction, are all conſpicuous. But while his genius and ability adorn the times in which he lived, and muſt draw to him the admiration of the moſt diſtant poſterity, it is not to be forgotten, that his political conduct was diſgraceful in the greateſt degree, and muſt excite its regrets, and provoke its indignation. His zeal for the earl of Murray, overturned altogether his allegiance as a ſubject, and his integrity as a man. His activity againſt Mary, in the conferences in England, was in a ſtrain of the moſt ſhameleſs corruption; and the virulence with which he endeavoured to defame her by his writings, was moſt audacious and criminal. They involve the complicated charge of ingratitude, rebellion, and perju *. hat

* His connections with the earl of Murray are ſuffi ntly inſtructive of his proneneſs to rebellion. In the con nces in England, he diſtinguiſhed himſelf by his ſuperior knowledge and keenneſs in explaining and declaiming ag inſt the ſuppoſed

That he repented of his political tranſactions, and of his malignity to Mary, has indeed been affirmed with great probability *; but no deciſive vouchers of his ſorrow have been recorded;

ſuppoſed letters of Mary to Bothwell; and like the commiſſioners whom he aſſiſted, he ſcrupled not to ſwear to their genuineneſs. It is obſervable, too, that the terms of the oath were ſuch, that no perſon of real probity could have employed them, even on the ſuppoſition that the letters are real and authentic. The commiſſioners did not ſwear that *they* BELIEVED or had REASON TO THINK, *that the letters were written by Mary*. They went a great deal farther. They ſwore point blank, that they were UNDOUBTEDLY HERS. Now, as they pretended not that they were preſent when ſhe is ſuppoſed to have framed theſe letters, and as there was a poſſibility of counterfeiting very exactly her hand-writing, they could not be perfectly ſure that they were genuine; and to ſwear moſt directly, of conſequence, that they were ſo, was infinitely improper. This, however, is ſtating the matter the moſt favourably for the commiſſioners and Buchanan; ſince it is very clear and obvious, that the letters are to be conſidered as a moſt deteſtable forgery. The charge, accordingly, of perjury in the fulleſt degree, is applicable to Buchanan, as well as to the commiſſioners; and as it is ſuſpected, and more than probable, that the letters which he ſwore to be genuine, were fabricated by himſelf, the opinion to be entertained of his enormity and guiltineſs is the more melancholy and aggravated. On the head of his ingratitude to Mary, the evidences, I fear, admit not of any doubt or palliation. Mary invited him from France to Scotland, with a view that he ſhould take the charge of the education of her ſon; and till James ſhould be of a proper age to receive inſtruction, ſhe appointed him to be chief maſter of St. Leonard's College, in the Univerſity of St. Andrews. Her generoſity did not ſtop there. She granted him a yearly penſion of five hundred pounds, payable out of the abbey of Corſragwel. The commiſſion for this gift is ſtill extant, and is dated upon the 9th day of October, 1564. For theſe notices I am indebted to my much eſteemed relation, Mr. Thomas Ruddiman, whoſe writings ſupport the literary glory of his country, and whoſe life inſtructed and improved his contemporaries. See his anſwer to Mr. Logan's Treatiſe on Government, p. 292, and his Animadverſions upon a tract, intitled "A Vindication of Mr. George Buchanan," p. 48. 70. 86.

* Johnſton, Hiſt. Rer. Britan. lib. iii.

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and in the ſhort Memoir he left of himſelf, he has avoided all mention of it. A dark cloud was gathering around him, when an opportune death afforded him a peaceful retreat from the anxieties and the cares of a world, with which his infirmities and his age had diſguſted him.

1583. Ambaſſadors arrive from France and England.

The captivity of James raiſed an alarm among the princes of Europe, and drew their curioſity towards Scotland. Henry III. commanded Monſieur de Fenelon, his reſident in England, to take the road to Edinburgh; and leſt the Engliſh court ſhould fall upon a pretence to interrupt his journey, orders were given to Monſieur de Maiſingvile to embark for the port of Leith. His inſtructions to both were to engage in meaſures to effectuate the liberty of James, to allure him to cordiality and friendſhip with France, to urge the aſſociation of Mary with him in the government of Scotland, and to diſſolve and weaken the Engliſh faction. Elizabeth, upon her part, was not idle or indifferent; and by Sir Robert Bowes, and William Davidſon, her ambaſſadors, ſhe ſet herſelf to counteract the policy of the court of France. They vigorouſly oppoſed the negociation which ſhe herſelf had opened for the liberty of Mary, and for the participation of that princeſs in the government of Scotland; and while they inſpirited the earl of Gowrie and his faction to continue in their uſurpation, and to depend upon her ſupport, they were ſolicitous to fill James with ſuſpicions of the ambition of his mother, and to terrify him by deſcribing the inſignificance to which he would reduce himſelf, if he ſhould conſent to admit her to any ſhare of power *. James, however, was not diſpoſed to be the dupe of her artifices; and he bore indignantly the inſolence of the nobles with whom ſhe

* Murdin, p. 373, 374.

had

had conſpired to hold him in bondage. The ambaſſadors of France recommended themſelves more effectually to his confidence; and he was convinced that while his title to reign was unacknowledged by Mary, it was unſubſtantial and invalid. He wiſhed, accordingly, to be united with her in the royalty; and by the advantage and power of their aſſociation, he expected not only to diſſolve the faction which had torn Scotland ſo long, but to be univerſally accounted a true and lawful King, and to be recognized in that capacity by the princes of Chriſtendom. A prince however, who is in fetters, can atchieve little; and the diſcovery of his inclinations being unavoidable, it awakened all the jealouſies and fears of his keepers. The earl of Gowrie and his party would not permit that any treaty or agreement ſhould take place, either for the liberty of Mary, or for her aſſociation in the government of her kingdom. They gave all their weight to Elizabeth, and exerted their fulleſt influence and addreſs in inflaming the people againſt the views of Mary, her ſon, and the King of France. The clergy exclaimed from their pulpits, that the proteſtant intereſt was in danger. The enlargement of Mary, and her union with James, they repreſented as wicked devices for the reeſtabliſhment of popery. They inveighed againſt Monſieur de Fenelon, and Monſieur de Maiſſonville, with pertinacity and rudeneſs, terming them "the ambaſſadors of that bloody murderer the "duke of Guiſe;" and the former having a white croſs upon his ſhoulder, as a knight of the order of the Holy Ghoſt, they denominated it in ridicule, "the badge of antichriſt." Theſe ambaſſadors, though fatigued and uneaſy with perpetual inſults, were ſatisfied that the King had not ſufficient authority to protect them, and that they

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Book VII. 1583. were unable, in the preſent juncture, to accompliſh the objects of their commiſſion; and while they avoided to complain of the indignities which had been offered to them, they expreſſed an eager deſire for their departure. James ſhocked with the treatment they had received, and willing to diſmiſs them in a good humour, ordered the magiſtrates of Edinburgh to give them a ſumptuous entertainment. The clergy upon the day appointed for this entertainment, proclaimed the celebration of a faſt; and three preachers, ſucceſſively mounting the pulpit of St. Giles, conſumed the day in invectives and raillery againſt the King of France, the duke of Guiſe, the ambaſſadors, and the Pope. The banquet, notwithſtanding, was not deferred; and the ambaſſadors were attended to it by many nobles and perſons of diſtinction. The clergy, diſappointed and enraged, allowed their rancour to increaſe; and it was with difficulty they were prevented from excommunicating the magiſtrates for neglecting their faſt *.

James ſends ambaſſadors to Elizabeth. James, in the mean while, was more and more anxious to recover his liberty; and being afraid, that Elizabeth might proceed to extremities againſt him, he had ſent to England, as his ambaſſadors, William Stuart, the colonel of his guard, and Mr. John Colvil. They were charged to intimate to this princeſs his deſire of continuing in a firm amity with England, and his hope, that ſhe would effectually interfere to procure his liberty, and to unite his ſubjects in their duty and allegiance; and they were commiſſioned to ſolicit for him the Engliſh eſtate of his grandmother the counteſs of Lennox, with the arrears due upon it from the court of wards, and to make a trial of her ſentiments with regard to the

* Calderwood, p. 138. Spotſwood, p. 324

pro-

propriety of his entering into a treaty of marriage. Theſe ambaſſadors were very oppoſite in their ſentiments and views. Colonel Stuart was zealous in the intereſts of his ſovereign; and Mr. Colvil was the partizan of the nobles of the Engliſh faction. They were employed in counteracting one another; and the negociation with which they were entruſted did not terminate in any conſequences that were ſerious or memorable. Elizabeth, while ſhe refuſed to ſurrender the eſtate of the counteſs of Lennox, or to account for its profits, aſſured James, by the former, that his ſafety, his friendſhip, and his marriage, the concord of his nobles, and the proſperity of his kingdom, were all objects in which ſhe was warmly intereſted; and that it would ever be her anxious care to conſult his advantage and felicity. By the latter ſhe diſpenſed encouragement and hope to the earl of Gowrie and his aſſociates, and renewed the aſſurance of her reſolution never to favour or advance the meaſure of the aſſociation of Mary with her ſon*.

He eſcapes from his captivity.

The earl of Gowrie and his friends whom the death of the duke of Lennox had relieved from a great ſource of inquietude, and who eſteemed themſelves powerful from the patronage and protection of Elizabeth, were under little apprehenſion of being overturned by a prince who was without experience, and in captivity. Their ſecurity, while it rendered them the more careleſs of their priſoner, invited him to court an opportunity to operate his eſcape. A convention of the Eſtates had been ſummoned to meet at St. Andrews, ſoon after the return of colonel Stuart and Mr. Colvil, for the purpoſe of deliberating upon the views and intentions of the Queen of

* Camden, p. 492. Johnſton, Hiſt. Rer. Britan. lib. iii.

Book VII. 1583. England. James, whom the earl of Arran, though a priſoner at Kinniel, had found the means to inſpirit and inſtruct by his counſels, pretending a deſire to pay a viſit to his grand uncle the earl of March, who reſided at St. Andrews, was permitted to repair to it a few days before the time appointed for the meeting of the convention. The better to deceive the earls of Gowrie, Angus, and Marre, who attended him, he took up his reſidence in an old inn, which was open and defenceleſs. But having expreſſed a deſire to ſee the caſtle of St. Andrews, he was conducted to it; and colonel Stuart who commanded his guard, and in whom he placed an entire confidence, after admitting a few of his retinue, ordered the gates to be ſhut. The earls of Argyle, Mariſhal, Montroſe, and Rothes, who were in concert with the King, haſtened to make him an offer of their ſwords. The oppoſite faction were unprepared for hoſtile meaſures, and filled with conſternation. Of the conſpirators at Ruthven, the earl of Gowrie alone, by the favour of colonel Stuart, was admitted to the King, and pardoned upon his promiſe of future loyalty. All thoſe againſt whom there was any reaſon of ſuſpicion, were commanded to retire out of the caſtle; and James appointed the earls of March, Argyle, Gowrie, Mariſhal, and Rothes, to be a council to aſſiſt him in the management of affairs. The activity of colonel Stuart, in his deliverance from confinement, received the fulleſt approbation of this council; and, no longer a pageant at the command of the lords of the Engliſh faction, James ſet out with exultation, for his capital *.

His lenity and moderation. Though James had the ſtrongeſt reaſons to reſent the behaviour of the conſpirators, yet as

* Calderwood, p. 240. Spotſwood, p. 325. Johnſton, Hiſt. Rer. Britan. lib. iii.

Elizabeth was concerned in their enterprize, and as her paſſions and power might ſuggeſt and execute the greateſt injuries and injuſtice to Mary and himſelf, he was inclined to exerciſe clemency and moderation. But while his apprehenſions of this princeſs were lively, the expectation of her favour operated efficaciouſly with the conſpirators; and they determined to continue their practices of rebellion, and to arm their retainers. The King, by the advice of his privy council, iſſued a proclamation, in which he invited them to accept his mercy, and in which he called upon his people to bury their contentions in oblivion. He declared, that though the Raid of Ruthven was a moſt treaſonable deed, and though the ſubſequent proceedings of its actors were ſtrong and violent, he was yet inclined to forgive them. He affirmed that he ſought not the ruin even of the moſt guilty of the conſpirators; and that it was his wiſh that they ſhould indiſcriminately make known to him their repentance, aſk for their remiſſions, and ſo behave themſelves in the future, that he ſhould never be provoked to a recollection of their offences. To his ſubjects in general, he recommended the imitation of his clemency; and he admoniſhed them that their private happineſs as well as the public tranquillity, would be effectually promoted by their renunciation of their malice, factions, and animoſities *.

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The diſcontented nobles refuſe to accept his clemency.

The forbearance and gentleneſs of the King were diſregarded by the conſpirators. They perſiſted to think of reſiſtance and hoſtility; and Sir Robert Bowes, the Engliſh ambaſſador, gave them the hope of the ſpeedy interference of Elizabeth. The earl of Arran having now re-aſſumed the exerciſe of authority, they affected to ſuſpect

* Spotſwood, p. 326.

Book V.I. 1583. the ſincerity of James, while he was under the direction of a miniſter who was deſtitute of probity, and whoſe paſſions, naturally furious, were exaſperated by the recentneſs of his ſufferings. Their obſtinate unanimity in refuſing to accept a pardon, filled the King and his privy council with ſuſpicions. He iſſued an order, by which he enjoined them to enter themſelves into confinement in particular places; but all of them, the earl of Angus excepted *, diſobeying his mandate, they were denounced to be rebels. A proclamation was publiſhed, by which the King commanded his ſubjects to be in readineſs to take the field; and an oath was exacted from his domeſtics that they ſhould hold no intelligence of any kind with his enemies †.

Elizabeth interpoſes in their favour.

Elizabeth heard with ſurprize and ſorrow of a revolution that threatened to overturn her domination in Scotland; and indulging the peeviſhneſs of her humour, ſhe took the liberty to addreſs a letter to James, in which ſhe reproached him for ſeparating himſelf from men whom ſhe termed the moſt deſerving of his ſubjects; and as in the time of his captivity he had promiſed never to re-admit the earl of Arran to his confidence, ſhe ventured to charge him with a direct breach of faith. To a reproach and a charge ſo ſingular and odious, James replied with a becoming ſpirit; and while he informed her that he would rather die with honour, than reign ſhamefully in the keeping of conſpirators; and that a promiſe, to which he was compelled by individuals who were maſters of his perſon and his kingdom, could not rightly be interpreted to be a real or ſolid obligation; he affected to find an apology

* The order to him was to confine himſelf beyond the Spey. † Johnſton, Hiſt. Rer. Britan. lib. iii. Spotſwood, p. 326.

for

for her ſharpneſs, in the improper inſinuations of thoſe of her council who were hoſtile to him*.

The letter of Elizabeth was ſoon followed by a meaſure ſtill more expreſſive of her anxieties. Sir Francis Walſingham, though aged and infirm, was ſent by her to Scotland, with a train of one hundred and twenty horſe; and was inſtructed to penetrate into the character of the King, to turn him from the counſels of the earl of Arran, and to fix him in a cordial amity with England. He had frequent conferences with James, in which he urged, with addreſs, the objects of his embaſſy; and he found him attentive to his own dignity and yet diſpoſed to treat the diſcontented nobles with moderation; willing to contract a faithful amity with England, yet averſe from being a ſlave to Elizabeth, or the pupil of her faction. After trying his capacity for buſineſs and affairs, he engaged him in general converſations, in order to meaſure with exactneſs the extent of his knowledge, and the powers of his mind. James, whom the inſults of the conſpirators had awakened to a quick ſenſe of his rank and his rights, diſcovered vigour and fortitude; and being freſh from his ſtudies, and having a talent for parade in diſcourſe, Walſingham, whoſe expectations of him had been narrow, was ſurprized into prepoſſeſſions that were greatly to his advantage. It was the reſult of his remark, that James could not only act with the ſpirit, but with the information of a King; and that his early gravity and prudence prognoſticated an approaching ſplendour and greatneſs. To this ſtateſman the earl of Arran made advances, from motives of deſign, or as the miniſter of James. He was treated, however, with neglect, and even with ſcorn. This uſage he repaid amply, by ſtudied

Secretary Walſingham arrives in Scotland.

September.

* Melvil, Memoirs, p. 279. 283.

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indignities; and when Walſingham took his departure for England, he contrived, that inſtead of a diamond of the value of ſeven hundred crowns, which the king intended for him, there ſhould be preſented to him a ring with a ſtone of cryſtal *.

Vigorous proceedings againſt the diſcontented nobles.

Although Walſingham in his converſations with James, regretted the factions which divided Scotland, and endeavoured to vindicate his miſtreſs from any improper concern in them, he admoniſhed not the diſcontented nobles to return to their duty and allegiance. It is even probable, that he followed the oppoſite courſe, and that he aſſiſted Sir Robert Bowes in confirming them in their ſeditious obſtinacy. For, it was in vain, that the King made a renewal to them of his offer of a pardon, upon their repentance and ſubmiſſion. Diſregarding his clemency and inclination for peace, they perſiſted to fill the country with diſtractions and inquietude. The earl of Arran, who by this time had been advanced to be lord high chancellor, and captain of the caſtles of Edinburgh and Stirling, did not neglect to take the advantage of an opportunity ſo favourable to the indulgence of his paſſions. He inflamed the prejudices of the King againſt the conſpirators; and a convocation of the three Eſtates being called, it was determined to proceed againſt them with an exemplary rigour, and the declaration by which James had branded the Raid of Ruthven as a moſt treaſonable deed, received the ampleſt confirmation. The conſpirators, puſhed to extremity, found it neceſſary to ſeek for ſafety in flight. The earl of Marre, and the maſter of Glammis, with the Abbots of Driburgh and Cambuſkenneth, took refuge in Ire-

* Camden, p. 492. Melvil, Memoirs, p. 296.

land.

land. The lord Boyd and the abbot of Dunfermling retired to France; and to others, the dominions of Elizabeth afforded an aſylum. The earl of Gowrie, though he had obtained a pardon from James, and had been reconciled to the earl of Arran, had never abandoned altogether the party of the conſpirators; and being expoſed to ſuſpicions, he applied for a licence to travel into foreign parts; but he lingered, notwithſtanding, in Scotland, meditating miſchief, and provoking the fate which was ſoon to overtake him *. Book VII. 1583.

Eccleſiaſtical affairs.

The clergy, in the mean while, who had juſtified the Raid of Ruthven, who were offended with the affection and partiality which the King diſcovered to Mary, and who were infinitely averſe from the earl of Arran, as an enemy to the Engliſh faction, were indefatigable in augmenting the national ferments and diſtreſs. In a general aſſembly held at Edinburgh, they drew up a remonſtrance, in which they detailed their grievances, and which, by their command, was preſented to the King. They complained that papiſts and maintainers of idolatry were poſſeſſed of the countenance of the court; that the King ſeemed to favour the enemies of the goſpel both in France and at home; that he gave his confidence to men of diſſolute lives and irreligious behaviour, in preference to ſervants who were zealous in the cauſe of God, and who had diſtinguiſhed themſelves by their fidelity to him in his tendereſt years; that ſince his acceptation of the government he had encroached upon the rights and liberties of the church; that no puniſhment was inflicted upon thoſe who were guilty of the abominable crimes of inceſt, adultery, and witchcraft; and that he was not careful to ce-

The clergy preſent their grievances to the King.

* Johnſton, Hiſt. Rer. Britan. lib. iii. Crawfurd, Officers of State, p. 139. Appendix, p. 447.

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ment the ruinous diviſions of the nobility. James received their complaints with an indignation which he ſtudiouſly repreſſed. His anſwer was gracious and politic. He expreſſed his approbation of the proteſtant doctrines, and denied that he could juſtly be charged with partiality to the Roman catholics. They glanced, he ſaid, at his correſpondence with foreign princes; and he deſired them to recollect, that the difference of religious ſentiment was not a foundation upon which to proſcribe the friendſhip of nations, and the legality of alliances. He entreated them not to be over curious in their inquiries into the choice of his ſervants. He obſerved, that he was ſo far from violating the privileges of the reformed eſtabliſhment, that many laws, moſt favourable to it, had been paſſed ſince the commencement of his adminiſtration. In fine, he aſſured them, that his diſpoſitions to the church and the ſtate were warm and affectionate; and that his concurrence to the reformation of both, ſhould be hearty and zealous *.

They addreſs themſelves to the people.

His moderation did not allay their diſſatisfactions. They harangued from their pulpits with a malignant pertinacity. John Drury, who had been baniſhed the capital for the treaſonable freedom of his ſermons, but had by this time received a pardon, indulged himſelf anew in the outrages of invective and declamation. In a diſcourſe to the people, after having arraigned the government, he ventured to vindicate the conſpirators in the Raid of Ruthven. Being cited before the privy council, he ſtood at firſt upon his defence; but when the danger to which he was expoſed was explained to him, he was induced to ſubmit himſelf to the pleaſure of the King. The behaviour of Mr. Andrew Melvil was more ſtubborn and

* Calderwood, p. 142. Spotſwood, p. 327.

reſolute.

reſolute. His audacity had been equal to that of Drury; for he had encouraged the people to ſeek a relief to their grievances, by reſiſtance and the ſword. His reputation was greater, and his example more dangerous. When he was carried before the privy council, he affected to vindicate himſelf from the ſcriptures, and formally declined the juriſdiction of the civil power. He told the King and his council that they were too bold to imagine that they were the proper judges of what was delivered from the pulpit; and that his ſpeeches, even on the ſuppoſition that they were ſeditious, ought to be tried by the preſbytery to which he belonged. They forgot, he informed them, the powers of the church, when they preſumed to neglect the paſtors, prophets, and doctors, and to controul the ambaſſadors and meſſengers of Chriſt. In order to convince them of their temerity and raſhneſs, he took from his girdle a little Hebrew Bible, and laid it upon the council table before the King and the chancellor. There, ſaid he, is my warrant; and I affirm that I have not exceeded its injunctions. The chancellor exclaimed with warmth, that he meant to inſult the King and his council. The witneſſes who had been cited for the purpoſe of proving his ſpeeches, were examined. The evidence againſt him was definitive; and it was pronounced that the liberties he had taken were treaſonable. Burſting forth into paſſion, he reproached the King with being active to pervert the laws both of God and man. He was charged to enter himſelf a priſoner at Blackneſs; but being unwilling to perſiſt any farther in his obſtinacy, he fled to the borders with precipitation, and entered the territories of Elizabeth. The wailings of the brethren were univerſal. They mourned that the lamp of learning was extinguiſhed,

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guiſhed, that the firmeſt champion of the reformed doctrines was driven into exile, and that the royal prerogative had annihilated the independency of the church *.

The diſcontented nobles break out in open hoſtilities.

The diſcontented nobles were infinitely impatient to regain their conſequence, and had conſpired to poſſeſs themſelves anew of the King's perſon. The earl of Marre and the Maſter of Glammis had returned from Ireland; and the earl of Gowrie, with whom they had maintained a correſpondence, had been buſy in keeping alive the zeal of their adherents. Their views and machinations, however, did not eſcape the vigilance of the earl of Arran. Colonel Stuart was ſent to Dundee to take the earl of Gowrie into cuſtody; who, being conſcious of guilt, did not ſurrender himſelf till after he had made an obſtinate reſiſtance. The earl of Marre and the Maſter of Glammis being joined by the earl of Angus, marched to the caſtle of Stirling, and carried it. But they abandoned their conqueſt upon the approach of the King, with a numerous and formidable army. The favourers of their cauſe were ſlow in ſhowing themſelves, and no Engliſh troops were in motion to aſſiſt them. They fled into England, deplored their forlorn condition to Elizabeth, beſought her aid, and reminded her, that they had loſt their eſtates, and the favour of their ſovereign, to advance her intereſts and grandeur. James diſpatched meſſengers to her court, to accuſe them of high miſdemeanors, and to require that they ſhould be delivered up to him. But Elizabeth, conforming to her inſidious practices, afforded them her protection; and, by her partizans in Scotland, ſhe was aſſiduous to counſel James not to drive them to deſpair, to re-

* State Papers, vol. B. p. 62. Johnſton, Hiſt. Rer. Britan. lib. iii. Calderwood, p. 145.

member

member their rank and popularity, and to conſider, that terror and violence were precarious and inadequate ſupports of authority*. Book VII. 1584.

Colonel Stuart conducted the earl of Gowrie to Edinburgh, and committed him to the Caſtle. The earl of Montroſe, the lord Down, and Sir Robert Melvil were directed to examine him; and they gave him a full hope of the royal mercy, if he would diſcloſe the purpoſes of the conſpiracy. He confeſſed that the diſcontented lords had confederated to riſe up in arms to recover their importance, and that the Queen of England was in concert with them. As to himſelf, he proteſted that his motive for engaging with them, was to ſecure his life and his eſtate; and that at the time he was apprehended, he was about to embark for France, from a terror that the enterprize would fail, but had been prevented by contrary winds. He was ſent to Kinniel under a ſtrong guard, and from thence to Stirling. Here he wrote a letter to the King, in which he earneſtly requeſted an audience; as he deſired to reveal the particulars of a plot, the execution of which had been prevented by him. Of this plot he repreſented the tendency as moſt dangerous, and while he expreſsly affirmed that it was deſigned not only againſt the life of Mary, but againſt that of the King, he inſiſted that it was of the higheſt conſequence that its circumſtances ſhould be known. His letter, whatever curioſity it might excite, did not anſwer his intention. The King refuſed to give him an audience; and the earl of Arran hurried on his trial. He was charged with conſpiring againſt the King, notwithſtanding he had received a pardon from him for his concern in a former plot, and notwithſtanding the honours and wealth he had enjoyed

The trial and execution of the earl of Gowrie.

4 May.

* Camden, p. 496. Spotſwood, p. 330.

by

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his bounty. He was accuſed of treaſonable converſations in the night with the ſervants of the earls of Angus and Marre, on the ſubject of poſſeſſing himſelf of Perth and Stirling. It was objected to him, that at Dundee he had reſiſted the King's authority by force and arms; and he was criminated with the concealment of a conſpiracy againſt the lives of the King and his mother. His defence was feeble and unſatisfactory; but he complained indignantly, and with great juſtice, that the laws of equity and honour were violated to effect his deſtruction, and that a confeſſion, which had been extorted from him under a promiſe of the royal mercy, had been employed to his prejudice. His peers * ſwore they were no inſtigators of the King's advocate to accuſe him, and after a ſhort deliberation, found him guilty of high treaſon. The doom of the law was pronounced, and a few hours after he was led out to the ſcaffold. In his behaviour he diſplayed a ſignal contempt of death, and of the world; and the crowd of ſpectators before whom he ſuffered decollation, were deeply affected with his magnanimity and fortitude †.

The King and the three Eſtates aſſert the rights of the civil power, and humble the church.

The ſeverity exerciſed againſt the earl of Gowrie, though it added ſtrength to the King and the earl of Arran, did not intimidate the clergy. They continued in their habits of rebellion; and certain intelligence being received that they were engaged in practices with the fugitive lords, citations were given to ſome of their leaders to appear before the privy council; but they refuſed to preſent themſelves, and indirectly ac-

* The earls of Argyle, Crawfurd, Montroſe, Glencairn, Eglinton, Arran, Mariſhal, the lords Seaton, Somervile, Down, Livingſton, Drummond, Ogilvy, Alexander Maſter of Oliphant, and Murray of Tullibardin.

† Johnſton, Hiſt. Rer. Britan. lib. iii. Camden, p. 497. Spotſwood, p. 332.

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knowledging their guilt, fled to England. A meeting of the three Eſtates was aſſembled; and the King, inſpirited by the earl of Arran, was diſpoſed to fortify himſelf in power by ſtrong and reſolute acts. The declaration of the King concerning the Raid at Ruthven, was ratified. It having grown into a cuſtom with the promoters of ſedition, and the enemies of order, to decline the judgment of the King and the council, when called before them to anſwer for rebellious or contumelious ſpeeches, uttered from the pulpit, or in public places, an ordination was made, aſſerting that they had complete powers to judge concerning perſons of every degree and function; and declaring that every act of oppoſition to their juriſdiction ſhould be accounted to be treaſon. It was enacted, that the authority of the parliament, as conſtituted by the free votes of the three Eſtates, was full and ſupreme; and that every attempt to diminiſh, alter, or infringe its power, dignity, and juriſdiction, ſhould be held and puniſhed as treaſon. All juriſdictions and judgments, all aſſemblies and conventions not approved of by the King and the three Eſtates, were condemned as unlawful, and prohibited. It was ordained that the King might appoint commiſſioners with powers to examine into the delinquencies of clergymen, and, if proper, to deprive them of their benefices. It was commanded, that clergymen ſhould not for the future be admitted to the dignity of lords of the ſeſſion, or to the adminiſtration of any judicature, civil or criminal. An ordination was made, which ſubjected to capital puniſhment, all perſons who ſhould inquire into the affairs of ſtate with a malicious curioſity, or who ſhould utter falſe and ſlanderous ſpeeches in ſermons, declamations, or familiar diſcourſe, to the reproach and contempt

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of the King, his parents, and progenitors. It was ordered that a guard, conſiſting of forty gentlemen, with a yearly allowance to each of two hundred pounds, ſhould continually attend upon the King. This parliament, which was full of zeal for the crown, did not overlook the Hiſtory of Buchanan, which about this time was exciting a very general attention. It commanded, that all perſons who were poſſeſſed of copies of his Chronicle, and of his treatiſe on the Scottiſh Government, ſhould ſurrender them within forty days, under the penalty of two hundred pounds, in order that they might be purged of the offenſive and extraordinary matters they contained. This ſtroke of tyranny was furious and ineffectual. Foreign nations, as well as his own countrymen, were filled with the higheſt admiration of the genius of Buchanan. It was not permitted that his writings ſhould ſuffer mutilation; they were multiplied in every quarter; and the ſeverity exerciſed againſt them only ſerved the more to excite curioſity, and to diffuſe his reputation *.

The diſcontents of the clergy.

The revival of epiſcopacy.

While the parliamentary acts, which ſtruck againſt the importance of the church, were in agitation, the miniſters deputed Mr. David Lindſay to ſolicit the King, that no ſtatutes ſhould paſs which affected the eccleſiaſtical eſtabliſhment, without the conſultation of the general aſſembly. But the earl of Arran having intelligence of this commiſſion, defeated it, by committing Mr. Lindſay to priſon, as a ſpy for the diſcontented nobles. Upon the publication, however, of theſe acts by the heralds, Mr. Robert Pont, miniſter of St. Cuthberts, and one of the ſenators of the court of ſeſſion, with Mr. Walter Balcanqual, proteſt-

* Statutes, James VI. Parl. 1584, c. 129, 130, 131, 132, 133, 134. 137.

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ed formally, in the name of the church, that it diſſented from them, and that they were conſequently invalid. Having made this proteſtation, they inſtantly fled, and were proclaimed traitors. By letters and pamphlets, which were artfully ſpread among the people, their paſſions were rouzed againſt the King and his council. The miniſters of Edinburgh took the reſolution to forſake their flocks, and to retire to England; and in an apology, circulated by their management, they anxiouſly endeavoured to awaken commiſeration and pity. They magnified the dangers which threatened them; and they held out, in vindication of their conduct, the example of the prophets, the apoſtles, the martyrs, and of Chriſt himſelf, who all concurred, they ſaid, in oppoſing the ordinations of men, when contradictory to the will of heaven, and in declining the rage of the enemies of God. The King appointed his own chaplains, and the archbiſhop of St. Andrews to perform the miniſterial functions in his capital. The clergy over Scotland were commanded to ſubſcribe a declaration which imported the ſupremacy of the King over the church, and their ſubmiſſion to the authority of the biſhops. The national ferments increaſed in their violence. Many miniſters refuſed to ſubſcribe this declaration, and were deprived of their livings. It was contended, that to make the King ſupreme over the church, was no better than to ſet up a new pope, and to commit treaſon againſt Jeſus Chriſt. It was urged, that to overthrow aſſemblies and preſbyteries, and to give dominion to biſhops, was not only to overſet the eſtabliſhed polity of the church, but to deſtroy religion itſelf. For the biſhops were the ſlaves of the court, were ſchiſmatical in their opinions, and depraved in their lives. It was af-

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firmed, that hereſy, atheiſm, and popery, would ſtrike a deep root, and grow into ſtrength. And the people were taught to believe that the biſhops would corrupt the nation into a reſemblance with themſelves; and that there would every where prevail diſſimulation and blaſphemy, perſecution and obſcenity, the profanation of the ſcriptures and the breach of faith, covetouſneſs, perjury, and ſacrilege. It was founded abroad, that the miniſters alone were entruſted with eccleſiaſtical functions, and with the ſword of the word; and that it was moſt wicked and prophane to imagine that Jeſus Chriſt had ever committed the keys of the kingdom of heaven to civil magiſtrates, and their ſervants or deputies *.

A conſpiracy is diſcovered againſt Elizabeth.

Elizabeth, mean while, was tortured with fears and jealouſies. Francis Throgmorton, the eldeſt ſon of John Throgmorton, a juſtice of peace in Cheſhire, was apprehended on ſuſpicion of having conſpired againſt her life, and to ſet at liberty the Queen of Scots. Upon his commitment, Thomas lord Paget, and Charles Arundel, withdrew themſelves into France, and openly complained of the violent adminiſtration of Leiceſter and Walſingham. Theſe miniſters, by the expreſs orders of their miſtreſs, or to flatter her paſſions, had employed ſubtle and unworthy artifices with a view to diſturb and oppreſs the Roman Catholics. Spies were diſperſed over England to watch their motions, and to report their diſcourſes. Large ſums of money were given to informers. Letters were counterfeited in the name of the Queen of Scots, and ſent to the houſes of Papiſts; and it was in conſequence of ſnares of this kind that there appeared ſome reaſon to ſuſpect the loyalty of Henry Percy earl of

The impriſonment and execution of Francis Throgmorton.

* Calderwood, p. 156. 170. Spotſwood, p. 333. 336.

Northum-

Northumberland, and Philip Howard earl of Arundel, the eldeſt ſon of the late duke of Norfolk. William Howard the brother of the earl of Arundel, and Henry Howard their uncle, were examined at different times on the ſubject of letters from the Queen of Scots and from Charles Paget; but no diſcovery or information of any treaſon or plot could be gathered from their anſwers. Francis Throgmorton was ſuppoſed to be concerned in the practices and deſigns of theſe noble perſons; and it was from an intercepted letter of his to Mary, that he was taken into cuſtody. He had, however, before his commitment, conveyed ſecretly a cabinet of private papers to Don Bernandine de Mendoza, the Spaniſh ambaſſador. In his coffers there were found a deſcription of the parts of England where troops might conveniently be diſembarked, and a liſt of the Engliſh gentlemen who profeſſed the Roman Catholic religion. When he was extended on the rack, theſe papers were produced to him; but he reſolutely called out that he had never ſeen them before, and that they had been forged for the purpoſe of his deſtruction. He was extended a ſecond time on the rack, and his reſolution forſaking him, he agreed to make a confeſſion. He acknowledged that he had framed the papers which were ſhewn to him; that Thomas Morgan had inſtructed him, by letters from France, that the Roman catholic princes had reſolved to invade England with a powerful army, under the command of the duke of Guiſe; that the leaders of the Engliſh Catholics had concerted to levy troops, and to join themſelves to this force; and that Mendoza, the Spaniſh ambaſſador, was deeply concerned in the conſpiracy, and had been induſtrious in promoting it. Throgmorton, however, when put to the examination

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* Murdin, p. 139. Camden, p. 489. Johnſton, Hiſt. Rer. Britan. lib. iii.

Upon the return of Sir William Wade from Spain, he was commiſſioned by Elizabeth to wait upon Mary, and to open a new negociation for her liberty. By this means ſhe was deſirous to ſoften the animoſity of the Scottiſh Queen, to repreſs the activity of her Engliſh partizans, to mitigate the ardour of the Roman Catholic princes, and to entice them to relinquiſh altogether, or at leaſt to drop for a time, the enterprizes they had formed to her prejudice. Mary, after having liſtened to Wade with a reſpectful attention, proteſted to him that ſhe was cordially inclined to a treaty of friendſhip and alliance; and that in the event of its fortunate iſſue, ſhe would not only intercede with her ſon for a pardon to the earl of Angus, and the other fugitive nobles, but exert all her influence to diſengage the courts of France and Spain from any hoſtile attempt againſt the realm of England. Elizabeth, happy in appearance with her peaceful diſpoſition, diſpatched to her Robert Beale, to aſſure her that ſhe would ſoon empower Sir Walter Mildmay to conclude a final negociation with her; and ſhe inſtructed this envoy and the earl of Shrewſbury, to perſuade her in the mean time, to ſolicit James for the immediate reſtoration of the Scottiſh fugitives, and to learn from her, if poſſible, the deſigns of the duke of Guiſe. Mary, undeceived by their addreſs or management, expreſſed anew her deſire of a formal treaty; obſerved that what had paſſed between her and Wade, was limited by the condition that ſhe ſhould be reſtored to her liberty; and aſſured them, that in this caſe, Elizabeth might depend upon the fulleſt exertion of her power for operating the pardon of the fugitive nobles. With regard to her connections with the duke of Guiſe, ſhe did not deny, that upon finding herſelf invaded by ſickneſs, ſhe had re-

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Elizabeth amuſes Mary with hopes and promiſes.

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commended herſelf and her ſon to his protection; and while ſhe intimated the folly of forſaking a firm friend for an uncertain hope, ſhe declared, that ſhe was a ſtranger to his attempts. The earl of Shrewſbury and Beale renewed the aſſurance which had been given to her by Wade, that her deliverance was at hand; and from their report, the Queen of England was ſenſible that it was in her power to dictate the terms of the treaty*.

She courts the earl of Arran.

The lord Hunſdon holds a conference with the earl of Arran upon the borders.

But while Elizabeth was guarding againſt her fears, indulging her paſſion for intrigue, and flattering her pride, by amuſing the Queen of Scots with deceitful expectations, ſhe was earneſt to gain the earl of Arran to her intereſts, that by his means ſhe might ſeduce the King of Scots into meaſures prejudicial to himſelf, and ruinous to Mary. Upon the recommendation of the lord Burleigh, ſhe had diſpatched William Davidſon to Scotland, under the character of her envoy or reſident. This ſtateſman, affecting to cenſure the preciſe behaviour of Walſingham towards the earl of Arran, ſought eagerly his familiarity and intercourſe. By degrees he opened to him the advantages to be gained from the friendſhip of Elizabeth, and let fall inſinuations that he might eaſily procure it. The earl of Arran who was ſurrounded with enemies, and who diſregarded the welfare of his country when in competition with his own, met with ardour the advances of a princeſs, whoſe ability to beſtow protection and rewards, was ſo inviting and powerful. It was concerted that he ſhould have an interview upon the borders with the lord Hunſdon, the governor of Berwick, and that they ſhould deliberate concerning the critical ſituation of the two kingdoms. The place ap-

* Additions aux Mem. de Caſtelnau, p. 56. 556. Camden, p. 499.

pointed

pointed for the conference was the village of Foulden; and the lord Hunſdon approached to it at the head of five hundred horſe. The guards of the earl of Arran were not leſs formidable. It was agreed that their troops ſhould take a ſtation at ſome diſtance from them; and that they ſhould meet each other attended reſpectively by thirteen perſons. Their ſalutations were ceremonious and reſpectful; and the earl of Arran employed the ſtrongeſt language to expreſs the ſincerity of his attachment to Elizabeth. He acknowledged that the Roman Catholic princes were ſoliciting James to join in overthrowing the power of Elizabeth; and he conſented to make a full diſcovery of their practices. The lord Hunſdon entreated his favour for the fugitive nobles; but he detailed their treaſons with ſo much heat, and opened ſo fully the foundations of his animoſity to them, that no hope could be entertained of his cordiality or reconciliation. In every other reſpect he was moſt obſequious. He ſolemnly engaged himſelf to attend in general to the intereſts of Elizabeth; and he bound himſelf in particular to prevent James from entering into any alliance or combination to her prejudice, and to keep him unmarried during the ſpace of three years *.

An act of attainder paſſes againſt the diſcontented nobles.

This interview filled the diſcontented nobles with dejection; and Elizabeth ſcrupled not to ſacrifice, for a ſeaſon, all the promiſes ſhe had made to them, and to forget all the ſervices they had performed to her. Upon the return of the earl of Arran, a parliament was holden at Edinburgh. Ludovick the young duke of Lennox, carried to it the royal crown, the earl of Crawfurd the ſword of ſtate, and the earl of Huntley the ſcep-

* Melvil, Memoirs, p. 316. Johnſton, Hiſt. Rer. Britan. lib. iii.

tre.

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tre. The treaſons of the earls of Angus and Marre, of the Maſter of Glammis, and of their adherents, were enumerated, and an act of attainder was paſſed againſt them. Their eſtates and poſſeſſions returned to the crown; and James gratifying his ſpirit of profuſion, made them flow to the earl of Arran and his faction *.

The fears and anger of Elizabeth.

A general dread is entertained of an invaſion of England by the Roman catholic powers.

Elizabeth being relieved by her connections with the earl of Arran from any terror of the machinations of James, was fortified in her purpoſe of proceeding to extremities againſt the Scottiſh Queen. She was convinced that the Roman Catholic princes had combined to attack her kingdom; and that Mary had inſpirited their enmities. The confeſſion of Throgmorton had made a deep impreſſion upon her. The Roman Catholics, both at home and abroad, were inflamed againſt her with a boundleſs and implacable rage. There prevailed many rumours of plots and conſpiracies againſt her kingdom and her life. Books were publiſhed, which detailed her cruelties and injuſtice to Mary in the moſt indignant language of reproach, and which recommended her aſſaſſination as a moſt meritorious act. The earl of Arran had explained to her the practices of the Queen of Scots with her ſon, and had diſcovered the intrigues of the Catholic princes to gain him to their views. While her ſenſibilities and fears were ſeverely excruciating to her, circumſtances happened which confirmed them in their ſtrength, and provoked her to give the fulleſt ſcope to the malignity of her paſſions. Crichton, a Scottiſh Jeſuit, paſſing into his own country, was taken by Netherland pirates; and ſome papers which he had torn in pieces and thrown into the ſea being recovered, were tranſmitted to England. Sir William Wade put them

* Calderwood, p. 165.

together

together with dexterity; and they demonſtrated beyond a doubt, that the invaſion of England was concerted by the Pope, the Spaniard, and the duke of Guiſe *. About this time too, a remarkable letter was intercepted from Mary to Sir Francis Engleſield. She complained in it that ſhe could have no reliance upon the integrity of Elizabeth, and that ſhe expected no happy iſſue to any treaty which might be opened for her reſtoration and liberty. She urged the advancement of the "great plot;" ſhe intimated, that the prince her ſon, was favourable to the "deſignment," and diſpoſed to be directed by her advice; ſhe entreated, that every delicacy with regard to her own ſtate and condition, ſhould be laid aſide without ſcruple; and ſhe aſſured him, that ſhe would moſt willingly ſuffer perils and dangers, and even death itſelf, to give relief to the oppreſſed children of the church †. Theſe diſcoveries, ſo exaſperating to the inquietudes and diſtreſſes of Elizabeth, were followed by a deep and general conſternation. The terror of an invaſion ſpread itſelf with rapidity over England; and the proteſtants, while they trembled for the life of their champion, were ſtill more alarmed with the dangers which threatened their religion.

An aſſociation is formed for the protection of Elizabeth.

In this ſtate of perplexity and diſtraction the counſellors of Elizabeth did not forget that they had been the inſtruments of her perſecution of the Queen of Scots, and of the ſeverities with which ſhe had treated the Roman Catholics. They were fully ſenſible, that her greatneſs and ſafety were intimately connected with their own; and they concurred in indulging her fears, jealouſies, and anger. It was reſolved that Mary ſhould peri-

* Mezeray, Memoires, Hiſt. et Critiques. tome ii. p. 40. Camden, p. 499. † Strype, vol. iii. p. 246.

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riſh. An aſſociation was formed, to which perſons of every condition and degree were invited. The profeſſed purpoſe of this aſſociation or ſociety was the preſervation of the life of Elizabeth, which it was affirmed was in danger, from a conſpiracy to advance ſome pretended title to the crown; and its members vowed and promiſed by the majeſty of God, to employ their whole power, their bodies, lives, and goods, in her ſervice, to withſtand as well by force of arms, as by other methods of revenge, all perſons of whatſoever nation or rank, who ſhould attempt in any form, to invade and injure her ſecurity or her life, and never to deſiſt from the forcible purſuit of them, till they ſhould be completely exterminated. They alſo vowed and proteſted, in the preſence of the eternal God, to proſecute to deſtruction, any pretended ſucceſſor by whom, or for whom, the deteſtable deed of the aſſaſſination of Elizabeth ſhould be attempted or committed *. The earl of Leiceſter was in a particular manner the patron of this aſſociation; and the whole influence of Elizabeth and her miniſters was exerted to multiply the ſubſcriptions to a bond or league, which was to prepare the way, and to be a foundation for accompliſhing the full deſtruction and ruin of the Scottiſh Queen.

Mary propoſes to Elizabeth the moſt favourable and inviting terms of an accommodation.

A combination ſo reſolute and ſo fierce, which pointed to the death of Mary, which threatened her titles to the crown of England, and which might defeat the ſucceſſion of her ſon, could not fail to excite in her boſom the bittereſt anxieties and perturbation. Weary of her ſad and long captivity, broken down with calamities, dreading afflictions ſtill more cruel, and willing to take away from Elizabeth every poſſible pretence of

* State Trials, vol. i. p. 122. Camden, p. 499.

ſeverity,

ſeverity, ſhe now framed a ſcheme of accommodation, to which no decent or reaſonable objection could be made. By Naw, her ſecretary, ſhe preſented it to Elizabeth, and her privy council. She proteſted in it, that if her liberty ſhould be granted to her, ſhe would enter into the cloſeſt amity with Elizabeth, and pay an obſervance to her above every other prince of Chriſtendom; that ſhe would forget all the injuries with which ſhe had been loaded, acknowledge Elizabeth to be the rightful Queen of England, abſtain from any claim to her crown during her life, renounce the title and arms of England, which ſhe had uſurped by the command of her huſband, the King of France, and reprobate the bull from Rome which had depoſed the Engliſh Queen. She likewiſe proteſted, that ſhe would enter into the aſſociation which had been formed for the ſecurity of Elizabeth; and that ſhe would conclude a defenſive league with her, provided that it ſhould not be prejudicial to the ancient alliance between Scotland and France, and that nothing ſhould be done during the life of the Engliſh Queen, or after her death, which ſhould invalidate her titles to the crown of England, or thoſe of her ſon. As a confirmation of theſe articles, ſhe profeſſed that ſhe would conſent to ſtay in England for ſome time as an hoſtage; and that if ſhe was permitted to retire from the dominions of Elizabeth, ſhe would ſurrender proper and acceptable perſons as ſureties. She alſo proteſted, that ſhe would make no alterations in Scotland, and that upon the repeal of what had been enacted there to her diſgrace, ſhe would bury in oblivion all the injuries ſhe had received from her ſubjects; that ſhe would recommend to the King, her ſon, thoſe counſellors who were moſt attached to England, and that ſhe would employ herſelf

Book VII. 1584. herſelf to reconcile him to the fugitive nobles; that ſhe would take no ſteps about his marriage without acquainting the Queen of England, and that to give the greater firmneſs to the propoſed accommodation, it was her deſire, that he ſhould be called as a party to it; and in fine, ſhe affirmed, that ſhe would procure the King of France and the princes of Lorraine to be guarantees for the performance of her engagements *. Elizabeth, who was ſkilful in hypocriſy, diſcovered the moſt deciſive ſymptoms of ſatisfaction and joy, when theſe overtures were communicated to her. She made no advances, however, to conclude an accommodation with Mary; and her miniſters and courtiers exclaimed againſt lenient and pacific meaſures. It was loudly inſiſted, that the liberty of Mary would be the death of Elizabeth; that her aſſociation with her ſon would be the ruin both of England and Scotland; and that her elevation to power, would extend the empire of popery, and give a deadly blow to the doctrines of the reformation †.

The embaſſy of the maſter of Gray.

The proſcription and forfeiture of the fugitive nobles did not completely gratify the vengeance of James and the earl of Arran. Patrick, maſter of Gray, was ſent to the court of Elizabeth, to demand their ſurrender; and if this favour could not be obtained, to procure their expulſion from England, or at leaſt their removal from the Scottiſh borders, where they were buſy in the practices of rebellion. He was alſo inſtructed to advance the intereſt and connexion of the earl of Arran with Elizabeth. This nobleman had reſided for ſome time in France; and having inſinuated himſelf into an intimacy with the duke of Guiſe, he had been recommended by him to the Queen of Scots. It was underſtood and believed, that he

* Camden, p. 499. † Ibid, p. 500.

would

would exert his influence to her advantage. His polite accompliſhments and his perſonal beauty had gained to him the confidence of James. He was vain, ſhowy, and pleaſurable. But under an effeminate carriage, and ſuperficial acquirements, he concealed a dangerous ſpirit, and a boundleſs ambition. He knew the arts of a court; and deſpiſed the principles of honour: he was deep in diſſimulation; and to the ſelfiſhneſs of his vices he was ever ready to ſacrifice the virtue of patriotiſm. Before his appointment to his embaſſy, he had been corrupted to the party of Elizabeth, by Davidſon, the Engliſh reſident. His reception at London, was ſplendid and flattering. The attention and bribes of the Engliſh Queen, made him enter into her views with a full cordiality. He diſcovered to her whatever he knew of the intentions of Mary and her ſon. He paid his court to the French ambaſſador, with the inſidious view of betraying his communications. He affected the moſt anxious concern for the misfortunes of Mary; and he was ſedulous to accompliſh her deſtruction. It conſiſted not with the preſent intereſt of Elizabeth, to take any ſtrenuous part in the defence of the fugitive nobles. When the maſter of Gray, therefore, explained the purpoſe of his embaſſy, ſhe iſſued her mandate, commanding them to retire to a diſtance from the Scottiſh borders. James was pleaſed with the ſucceſs of his ambaſſador, and flattered with the reſpect that was paid to him. The earl of Arran perceived his riſing credit and influence; and already, the ſeeds of jealouſy were awakening the hoſtile paſſions of the royal favourites *.

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Elizabeth was advancing ſecurely in her intentions againſt Mary; and in order to remove as far

Mary is treated with new

* Melvil, Memoirs, p. 316, 317. Spotſwood, p. 338.

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far as poſſible from herſelf the unworthy imputations of malignity and revenge, exaggerated reports were circulated of the dangers to which ſhe was expoſed from the arts of the Scottiſh princeſs and the Roman Catholics. Symbols and emblems were invented and ſent to Mary, and produced as intercepted, in which inſinuations were expreſſed, of improper deſigns and combinations. Forged letters were employed with a ſimilar intention. It was ſpread abroad, that Mary had engaged in an amour with the earl of Shrewſbury; and his counteſs, who was a woman of a violent temper, being actually deceived, or being gained by the miniſters of Elizabeth, did not ſcruple to foſter this calumny *. Elizabeth pretended

indigſhities, and committed to the keeping of Sir Amias Paulet and Sir Drue Drury.

* The counteſs of Shrewſbury, during the period of her intimacy with Mary, had communicated to her many anecdotes concerning the amours and the weakneſſes of Elizabeth. Intimations of this liberty reached the Engliſh princeſs; and after the rupture of Mary with the counteſs, ſhe applied earneſtly to the former to detail to her the reports ſhe had heard. Mary complied in a very ſingular letter, which it becomes me to ſubmit to my readers.

A letter from the Queen of Scots to Queen Elizabeth.

" Suivant ce que je vous ay promis et auvez deſpuis deſire, " je vous declare ores, qu'aveques regret, que telles choſes " ſoyent ammences en queſtion, mays tres ſincerement et ſans " aucune paſſion dont japelle mon Dieu a teſmoing, que la " compteſſe de Schreuſbury, madid de vous ce qui ſuit au plus " pres de ces termes. A la plus part de quoy je proteſte avoir " reſpondu, reprenante la ditte dame de croire ou parler ſi li- " ſientieuſement de vous, comme choſe que je ne croyois point, " ni croy a preſent, congnoiſſant le naturel de la compteſſe et " de quel eſprit elle eſtoit alors poulſee contre vous. Premiere- " ment, qu'un, auquel elle diſoit que vous aviez faict promeſſe " de mariage devant une Dame de votre chambre, avoit couſche " inſinies foys auveſques vous avec toute la licence et privaulté " qui ſe peut uſer entre Mari et femme; mays qu'indubitable- " ment vous neſtiez pas comme les autres famnes, et pour ce " reſpect ceſtoit follie a touz ceulx qui affectoient voſtre mar- " riage avec Monſieur le Duc d'Anjou, d'aultant qu'il ne ce " pourroit accomplir; et que vous ne vouldrier jamais perdu

la

tended to believe it; and as ſhe was diſpleaſed with this nobleman for the humanity he had ſhewn

" la liberte de vous fayre fayre l'amour et auvoir voſtre pleſir
" tousjours auveques nouvaulx amoureaulx, regrettant ce,
" diſoit elle, que l'ous ne vous contentiez de maiſter Haton,
" et un aultre de ce Royaulme; mays que pour l'honneur du
" pays il lui faſhoit le plus, que vous aviez non ſeullement en-
" gaſge votre honneur auveques un eſtrangier nommé Simier,
" l'alant trouver de nuit en la chambre d'une dame, que la
" dicte compteſſe blaſmoit fort a ceſte occaſion la, ou vois le
" baiſiez et uſiez auvec luy de diverſes privaultes deſhonneſtes;
" mays auſſi luy revelliez les ſegretz du Royaulme, trahiſantvos
" propres conſeillers aveſques luy: Que vous vous eſtiez deſ-
" portee de la meſme diſſolution avec le Duc ſon mayſtre, qui
" vous avoit eſte trouver une nuit à la porte de voſtre chambre,
" ou vous laviez rencontre auvec voſtre ſeulle chemiſe et man-
" teau de nuit, et que par apres vous laviez laiſſe entrer, et
" qu'il demeura aveques vous pres de troys heures. Quant au
" dict Haton, que vous le couriez a force fayſant ſi publique-
" ment paroitre l'amour que luy portiez, que luy meſmes eſtoit
" conſtreint de s'en retiver, et que vous donnaſtes un ſoufflet a
" Killigreu pour ne vous avoir ramene la dict Haton, que vous
" aviez envoiay rappeler par luy, s'etant deſpatti en chollere
" d'auveques vous pour quelques injures que luy auviez dittes
" pour certeins boutons dor qu'l avoit ſur ſon habit. Qu'elle
" auvoit travaille de fayre eſpouſer au dit Haton la feu comteſſe
" de Lennox ſa fille, mays que de creinte de vous, il ne oſoit
" entendre; que meſme le comte d'Oxfort noſoit ce rappointer
" aveques ſa femme de peur de perdre la favour qu'il eſperoit
" recepvoir par vous fayre l'amour: Que vous eſtiez prodigue
" envers tous telles gens et ceulx qui ce meſtoient de telles
" meſnees, comme a un de votre Chambre Gorge, anquel
" vous aviez donne troys centz ponds de rante pour vous avoir
" apporte les nouvelles du retour de Haton: Qu'a touz aultres
" vouz eſtiez fort ingrate chiſche, et qu'il ni avoit que troys
" ou quatre en votre royaulme a qui vous ayez jamays faict
" bien: Me conſeillant, en riant extreſmement, mettre mon
" fitz ſur le rancs pour vous fayre, l'amours, comme choſe qui
" me ſerviroit grandement et metroit Monſieur le Duc hors de
" quartier; qui me ſeroit tres prejudiſiable ſi il i continnoit;
" et lui repilquant, que cela ſeroit pris pour un vraye moquerie,
" elle me reſpondit que vous eſtiez ſi vayne et en ſi bonne opi-
" nion de votre beaute, comme ſi vous eſtiez quelque Deeſe du
" Ciel; qu'elle prandroit ſur la teſte de la vous fayre croire fa-
" cillement et entretiendroit mon filz en cette humour: Que
" vous preniez ſi grand pleſir en flatteries hors de toute rayſon,

Book VII. 1584. ſhewn to Mary, ſhe made it a foundation upon which to ſuſpect his fidelity to her intereſt. He was

" que l'on vous diſoit, comme de dire, qu'on ne vous oſoit par
" foys reguarder aplain, d'aultant que votre face luyſoit comme
" le ſoleill: Qu'elle et toute les aultres Dames de la Cour
" eſtoints conſtreintes d'en uſer, et qu'en ſon dernier voyage
" vers vous, elle et la feu comteſſe de Lenox parlant a vous
" n'eoſoient s'entreregarder l'une et l'autre de peur de s'eclater
" de rire des caſſades quelle vous donnoint, me priant a ſon
" retour de tancer ſa fille quelle n'avoyt jamays ſceu perſuader
" de fayre le meſme; et quant a ſa fille Talbot, elle s'aſſuroit
" qu'elle ne fauldroit jamays de vous rire au nez: la dicte dame
" Talbot lors quelle vous alla fayre la reverance et donne le
" ferment comme l'une de vos ſervantes, a ſon retour imediate-
" ment, me la comtant comme une choſe fayte en moquerie,
" me pria de l'accepter pareil, mais reſſent et entier vers moy,
" du quel je feis lons tems refus; mays a la fyn a force de
" larmes je la laiſſay faire, diſant quelle ne vouldroit pour
" choſe du monde eſtre en votre ſervice pres de votre perſonnes
" d'autant quelle auroit peur que quand ſeriez en cholere ne
" luy fiſſies comme a ſa couſine Skedmar, a qui vous auviez
" rompu un doibt, faciant a croire a ceulx de la cours, que
" ceſtoit un chandelier qui eſtoit tombe deſſubz; et qu'a une
" aultre vos ſervant a taille aviez donne un grand coup de cou-
" ſteau ſur la mayn: Et en un mot, pour ces derniers pointz
" et communs petitz rapportz, croyez que vous eſtiez jouee et
" contrefaicte par elles comme en comedie entre mes femmes
" meſme; ce qu'apercevant, je vous jure que je deffendis a
" mes femmes ne ce plus meſler. Davantaſge, la dicte com-
" teſſe ma autreſoys advertie que vous vouliez appointer Rol-
" ſon pour me tayre l'amour et eſſayer de me diſhonorer, ſoyt
" en effect, ou par mauvais bruit, de quoy il avoyt inſtructions
" de votre bouſche propre: Que Ruxby veint ici, il i a envi-
" ron VIII ans, pour attempter a ma vie, ayant parle a vous
" meſmes, quy luy aviez dit quil fit ce a que Walſingham luy
" commenderoit et dirigeroit. Quant a dicte comteſſe pour-
" ſuivoit le mariage de ſon filz Charles auveques une de niepe-
" ces du milord Paget, et que daultre part vous vouliez lavoir
" par pure et abſolute auctorite pour un des Knoles, pour ce
" quil eſtoit voſtre parent; elle crioit fort contre vous, et diſoit
" que ceſtoit une vraye tirannie voulant a voſtre fantaſie enle-
" ver toutes les heritieres du pays, et que vous aviez indigne-
" ment uſe le dit Paget par parolles injurieuſes; mays qu'enfin
" la nobleſſe de ce royaulme ne le vous ſoufriſoit pas meſme-
" ment, ſi vou addreſſiez a telz aultres quelle connoiſſoit bien.
" Il y a environ quatre ou ſing ans que vous eſtant malade, et

" moy

was removed accordingly from the charge of the Scottiſh Queen; and the earl of Leiceſter recommended

" moy auſi au meſme temps, elle me dit, que votre mal pro-
" venoit de la cloſture d'une fiſtulle que vous aviez dans une
" jambe; et que ſans doubte venant a perdre voz movs, vous
" mourriez bientoft, s'en resjouiſſant ſur une vayne imagina-
" tione quelle a eue de long temps par les predictions d'une
" nomme John Lenton, et d'un vieulx liuvre qui prediroit
" voſtre mort par violence, et la ſuceſſions dune aultre Royne,
" quelle interpretoit eſtre moy, regrettant ſeullement que par
" le dit liuvre il eſtois predit que la Royne qui vous deubroit
" ſucceder ne regneroit que trois ans, et mouroit comme vous,
" par violance, ce qui eſtoit repreſente meſme en peinture dans
" le dict liuvre, auquel il y avoyt un dernier feuillet, le con-
" tenu duquel elle ne ma jamais voulu dire. Elle ſcait meſme
" que jay tousjours pris cela pour une pure follie, mays elle
" feſoit bien ſon compte deſtre la primiere aupres de moy, et
" meſmement que mon filz epouſeroit ma niepce Arbela. Pour
" la fin je vous jure encores un coup ſur ma foy et honneur
" que ce que deſubz eſt tres veritable; et que de ce qui con-
" ſerne voſtre honneur, il ne meſt jamais tombe en l'entende-
" ment, de vous fayre torte par le reveller; et qu'il ne ce ſcaura
" jamays par moy, le tenant pour tres faulx. Si je puis avoir
" ceſt heur de parler a vous, je vous diray plus particuliere-
" ment les noms, tems, lieux et aultres ſirconſtances pour vous
" fayre congnoiſtre la verite et de ceſſi et d'aultres choſes que
" je reſerve, quant je ſeray tout a fayct aſſeuree de voſtre ami-
" tie, laquelle comme je deſire plus que jamays, auſſi ſi je la puis
" ceſte foys obtenir, vous neuſtes jamays parente, amy, ny
" meſme ſubject, plus fidelle et affectionne que je vous ſeray.
" Pour Dieu aſſeurez vous de celle qui vous veult et peult ſer-
" vir. De mon lit forcant mon bras et mes douleurs pour vous
" ſatisfayre et obeir. Marie R." Murdin, p. 558. 560.

In the main there is little reaſon to doubt the corrupt manners of Elizabeth; and upon this head it may be ſufficient to refer to the curious information preſerved in Haynes. See his Collection of State Papers, p. 99, &c. Amidſt the infamous calumnies which this princeſs was ſolicitous to fix upon the Queen of Scots, it muſt excite the higheſt indignation to conſider her own contempt of chaſtity, and the unprincipled licentiouſneſs of her private life. Even when palſied with age ſhe was yet burning with unquenchable deſires; and vain of her haggard and cadaverous form, ſought to allure to her many lovers. See Murdin, p. 657. 718, 719; and the diſcoveries of a writer, whoſe pen, elegant, poignant, inquiſitive, and

Book VII. 1584. commended as her keepers, Sir Amias Paulet, and Sir Drue Drury. Theſe perſons were rigid puritans; and it was expected that they would be forward to treat her with an outrage and inſult that would drive her to deſpair, and involve her in the guilt of ſome raſh reſolution. The earl of Leiceſter, impatient of delays, and ready to gratify the rage of his miſtreſs, even ventured to ſend aſſaſſins to put a period to her exiſtence. But her keepers, though ſtern and inexorable, were not loſt to virtue; and while they rejected his propoſal with ſcorn, they felt the infamy of the buſineſs in which they were employed. The cruelty of Elizabeth and her counſellors diminiſhed the impreſſion of the dangers which were ſaid to hang over their heads; and the reports they ſent abroad being likely to periſh, becauſe dark and uncertain, they now charged the Roman Catholics with a plot, of which they deſcribed the particulars with a preciſe exactneſs. It was propagated through the nation that the Pope, the Spaniard, and the Roman catholics, had reſolved to treat Elizabeth and the King of Scots as notorious heretics, to deprive the former of her diadem, and to annul the claims of the latter to the kingdom of England; that they were engaged to conduct Mary from her priſon to the throne of her ſiſter; that they had concerted to marry her to Henry Howard, brother to the late duke of Norfolk; and that they had determined, that the children of this alliance ſhould be proclaimed the lawful ſucceſſors to the Engliſh crown *.

polite, improves and embelliſhes every topic that it canvaſſes. Walpole, Catalogue of royal and noble Authors, vol. i. p 126.

* Camden, p. 500.

The

1585.

The violent and impopular adminiſtration of the earl of Arran.

The earl of Arran intoxicated with power, was active to abuſe it. The nobility were ſtung with envy, and the people were inflamed with hatred. His adminiſtration was violent; and he diſdained every art of popularity. As lord high chancellor, he preſided in parliament, and in the privy council. To the lords of the ſeſſion he iſſued his mandates; and that unfortunate court, which in former times had received with obeiſance the directions of David Rizzio, and of the earl of Morton, flattered his inſolence and rapaciouſneſs by diſpenſing oppreſſion and injuſtice. He was provoſt of Edinburgh, and the governor of its caſtle. He was the keeper of the caſtle of Stirling; and he had lately been created lord lieutenant of the kingdom. His creatures beſieged the perſon of the king, and guarded him from the wiſdom of counſellors who were friendly to their country and virtue. He boaſted that he was deſcended from Murdo, duke of Albany, and that he had a title to the crown. He was pleaſed when his paraſites honoured him with the appellation of "King James the Seventh." The ſubjects of Scotland trembled under the tyranny of his government. His favour was openly held out to ſale; and while his corruption was enormous, he indulged not only a capricious levity, but gave way to the fury of his paſſions. He required the earl of Athol to divorce his wife, and to entail his eſtate upon him; and he committed that nobleman to priſon for refuſing to comply with theſe wild requeſts. He ordered into cuſtody the lord Hume and the maſter of Caſſilis; becauſe the former did not chooſe to make him a preſent of the lands of Dirleton, and becauſe the latter was averſe from giving him a loan of money. From Maxwel, earl of Morton, he demanded the inheritance of his family; and he

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offered him in exchange, the forfeited barony of Kenneil. But the earl of Morton being unwilling to conclude this diſhonourable and unequal tranſaction, he ſtirred up the hereditary feuds and animoſities between the Maxwels and the Johnſtones. Encounters and battles were fought by the rival families; and a convention of the Eſtates finding it neceſſary to interfere, commanded troops to be levied for the preſervation of the peace. A terror and ſuſpicion of his practices and ſpies ſpread over the kingdom. The intercourſe of public ſociety and the pleaſures of private life were invaded and diſturbed; and men knew not where they might ſpeak or act without expoſing to hazard their property or their perſons *.

Executions.

A new ambaſſador is ſent to England.

But in the midſt of his domination he was not not exempted from fears. Though he felt not the ſtings of remorſe, he was conſcious of the fate which he merited. He knew that the great body of the people give uniformly their verdict for virtue; but he forgot that the bloodieſt acts of the tyrant ſerve to haſten his fall. It was from the fugitive nobles that he dreaded his humiliation; and it was an infinite diſſatisfaction to him, that Elizabeth could not be prevailed upon to ſurrender them. David Hume, of Argaty, and Patrick Hume, his brother, having correſponded with them upon private affairs, were condemned as traitors, and executed. A proclamation was iſſued, which complained that intelligence with the fugitive nobles was kept up by many of their party, and which offered to any perſon guilty of this crime, his own pardon, and a ſpecial reward if he would accuſe his aſſociates. Malcolm Douglas, of Mains, and John Cunningham, of

* Johnſton, Hiſt. Rer. Britan. lib. iii. Staggering State of the Scots Stateſman, p. 7, 8.

Drum-

Drumwhaſel, were charged with having conſpired with them to ſeize the King's perſon while he was hunting. Sir James Edmonſton, of Duntraith, acting in concert with the earl of Arran, appeared as the witneſs againſt them; and having been accuſed of the ſame crime, he made a confeſſion of their joint guilt. He obtained his pardon, and afterwards acknowledged his perjury; but the ſentence of death was pronounced againſt Douglas and Cunningham, who were perſons of diſtinction; and the ſame day they were hanged on a gibbet. Upon the foundation of the plot imputed to theſe gentlemen, of ſeizing the King in confederacy with the fugitive nobles, Sir Lewis Ballenden, the juſtice clerk, was diſpatched to England, to complain of them to Elizabeth. They were accordingly called from Norwich, where they reſided, in order to defend themſelves; and they found it an eaſy matter to eſtabliſh their innocence. Sir Lewis Ballenden, though he declaimed publicly againſt them with great fervour, was ſecretly their friend; and Elizabeth, who had gained him to her party, intimated to him, that with the aſſiſtance of the maſter of Gray, ſhe had planned their return to Scotland, and the overthrow of the earl of Arran. But not to awaken ſuſpicions or jealouſy, ſhe empowered him to aſſure the earl of Arran that he might entirely depend upon the power and ſincerity of her friendſhip *.

Parry's conſpiracy.

While Elizabeth was plotting with exquiſite art the deſtruction of Mary, a frivolous and fantaſtical man had conſpired to take away her own life. William Parry, a native of Wales, had embraced the Romiſh religion with a holy fervour. In this ſtate of his mind, the diſtreſſes of

* Spotſwood, p. 388.

Book VII. 1585. the Roman catholics of England made a deep impreſſion upon him; and he was ſeized with a deſire of atchieving ſome ſignal exploit that would operate to their relief. The piety of his purpoſe was commended by all thoſe to whom it was communicated; and at Paris, having met Thomas Morgan, a moſt zealous partizan for the Queen of Scots, he was urged ſtrenuouſly not to delay his performance of ſome notable ſervice to God, and the catholic church. He affirmed, that he was ready to kill the greateſt ſubject of England. And why not, ſaid Morgan, the Queen herſelf? The boldneſs of this enterprize did not alarm him; but heſitating about its legality, he expreſſed a wiſh to procure the approbation of the pope. Ragazzoni, the pope's nuncio in France, tranſmitted a letter from him to Rome. Returning to England, he waited impatiently an anſwer to his application; and it was not long before he was favoured with diſpatches from Cardinal Como, which not only approved his deſign, but which contained his abſolution in the name of the pope. At different times he got acceſs to Elizabeth in the character of a ſpy who was attentive to her intereſts, and who had ſecrets to reveal to her. But being unwilling to aſſaſſinate her, if he could perſuade her to be kind to the Roman catholics, he had laid aſide his dagger upon theſe occaſions, and had employed himſelf to work upon her fears, by repreſenting the dangers which encompaſſed her. A book, written by Dr. Allen, who attained afterwards the dignity of a cardinal, fell now into his hands; and the object of it was to prove that the murder of a prince, excommunicated for hereſy, is a ſacrifice highly acceptable to heaven. He was fully convinced by its reaſonings; and having thrown aſide every ſcruple, and determined to execute his

his enterprize, he aſſociated to him Edmund Nevil, the heir of the houſe of Weſtmoreland. They bound themſelves to mutual fidelity and ſecrecy, by ſwearing upon the Bible; and it was reſolved that they ſhould ſhoot Elizabeth while ſhe was riding abroad to take the air. But intelligence, in the mean time, having arrived that the earl of Weſtmoreland had died in Flanders, Nevil, deſirous to ſucceed to the poſſeſſions of his family, informed againſt Parry, who was committed to the Tower. When the indictment was read to him he confeſſed that he was guilty; and the ſentence of the law being pronounced, he ſuffered the death of a traitor *. Book VII. 1585.

The Queen of Scots had been removed from Sheffield to the caſtle of Tutbury; and under her new keepers ſhe experienced a treatment which was in the higheſt degree unjuſt, diſreſpectful, and acrimonious. Two apartments or chambers only were allotted to her; and they were ſmall and inconvenient, meanly furniſhed, and ſo full of apertures and chinks that they could not protect her againſt the inclemencies of the weather. The liberty of going abroad for pleaſure or exerciſe was denied to her. She was aſſailed by rheumatiſms and other maladies; and her phyſician would not undertake to effect a cure, or even to procure her any eaſe, unleſs ſhe ſhould be removed to a more commodious dwelling. Applications for this purpoſe were frequently made, and uniformly rejected. Here, however, her own afflictions did not extinguiſh in her mind her ſenſibility for the miſfortunes of others; and ſhe often indulged herſelf in the ſatisfaction of employing a ſervant to go through the village of Tutbury in ſearch of objects of diſtreſs, to whom The ſufferings and diſtreſs of Mary. March.

* State Papers, vol. B. p. 60. Johnſton, Hiſt. Rer. Britan. lib. iii. Camden, p. 302.

ſhe

Book VII. 1585. she might deal out her charity. But her inhuman keepers envying her this pleasure, commanded her to abstain from it. Imputing their rigour to a suspicious fidelity, she desired that her servant might on these occasions be accompanied by one of the soldiers of their guard, or by the constable of the village. But they would not alter their prohibition. They refused to her the exercise of the christian duty of dispensing an alms; and they would not allow her the soft consolation of moistening her eye with sorrows not her own. To insult her the more, the castle of Tutbury was converted into a common jail. A young man, whose crime was the profession of the Romish religion, was committed to a chamber which was opposite to her window, in order that he might be persecuted in her sight with a pestilent cruelty. Notwithstanding his cries and resistance, he was dragged every morning to hear prayers, and to join in the protestant worship; and after enduring several weeks this extraordinary violence to his conscience, he was unmercifully strangled without any form of law or justice. Mary remonstrated with warmth to Elizabeth, against indignities so shocking and so horrible; but instead of obtaining consolation or relief, she was involved more deeply in woe, and exposed to still harder inventions of malice and of anger*.

Elizabeth sows dissention between Mary and her son.

In the midst of her misfortunes, Mary had still solaced herself with hope; and from the exertions of her son, she naturally expected a superlative advantage. He had hitherto behaved with a becoming cordiality; and in the negociation which she had opened with him for her association in the government, he had been studious

* Addit. aux Mem. de Castelnau, p. 581, 582. 586. 589.

to

to pleaſe and flatter her. He had informed her by a particular diſpatch, that he found the greateſt comfort in her maternal tenderneſs, and that he would accompliſh her commands with humility and expedition; that he would not fail to ratify her union and aſſociation with him in the government; that it would be his moſt earneſt endeavour to reconcile their common ſubjects to that meaſure; and that ſhe might expect from him, during his life, every ſatisfaction and duty which a good mother could promiſe to herſelf from an affectionate and obedient ſon *. But theſe fair bloſſoms of kindneſs and love were all blaſted by the treacherous arts of Elizabeth. By the maſter of Gray, who had obtained an aſcendant over James, ſhe turned from Mary his affections. He delayed to ratify her aſſociation in the government, and he even appeared to be unwilling to preſs Elizabeth on the ſubject of her liberty. The maſter of Gray had convinced him, that if any favour was ſhewn to Mary by the Queen of England, it would terminate in his humiliation. He aſſured him, that if his mother were again to mount the Scottiſh throne, her zeal for popery would induce her to ſeek a huſband in the houſe of Auſtria; that ſhe would diſſolve his aſſociation with her in the government, on the pretence of his attachment to the reformed doctrines; and that he would not only loſe the glory of his preſent power, but endanger his proſpects of ſucceſſion. Mary expoſtulated with him by letter, upon the timidity and coldneſs of his behaviour; and he returned her an anſwer full of diſreſpect, in which he intimated his reſolution to conſider her in no other character than as Queen mother †. Her amazement,

* Murdin, p. 434. † Additions aux Mem. de Caſtelnau, p. 571.

indig-

Book VII. 1585. indignation, and grief were infinite. She wrote to Caſtelnau, the French ambaſſador, to inform him of her inquietudes and anguiſh, "My ſon, "ſaid ſhe, is ungrateful, and I deſire that the "King, your maſter, ſhall conſider him no longer "as a ſovereign. In your future diſpatches, ab- "ſtain from giving him the title of King. I am "his Queen and his ſovereign; and while I live, "and continue at variance with him, he can at "the beſt be but an uſurper. From him I derive "no luſtre; and without me he could only have "been lord Darnley, or the earl of Lennox; for "I raiſed his father from being my ſubject to be "my huſband. I aſk from him nothing that is "his; what I claim is my own; and if he per- "ſiſts in his courſe of impiety and ingratitude, "I will beſtow upon him my malediction, and "deprive him not only of all right to Scotland, "but of all the dignity and grandeur to which "he may ſucceed through me. My enemies ſhall "not enjoy the advantages they expect from "him. For to the King of Spain, I will con- "vey, in the ampleſt form, my claims, titles, "and greatneſs *."

She is threatened from abroad.

But while Elizabeth found a ſource of the moſt diſquieting anxiety in the Queen of Scots, and was diſturbed by continual apprehenſions of her Roman Catholic ſubjects, ſhe was menaced with dangers and hoſtility from abroad. The Pope, the king of Spain, and the duke of Guiſe, had concluded a formal alliance called the Holy League. The great and general object of their confederacy was the extirpation of the proteſtant religion over Europe. The Pope was earneſt to recover his antient domination over the princes of Chriſtendom; the king of Spain was intoxicated

* Additions aux Mem. de Caſtelnau, p. 572. 575.

with

with his ſcheme of univerſal monarchy; and the duke of Guiſe was conſulting the greatneſs of his family, in the reſtoration of the Queen of Scots to her crown. The Hugonots in France, who were directed by the king of Navarre, took the alarm. Elizabeth, and the Reformed of England and Scotland, were thrown into perplexity and deſpondence. The idea of a counter alliance of the proteſtant princes ſuggeſted itſelf; and by two religions, which preached humility and peace, it ſeemed that Europe was about to be deluged with blood. Elizabeth was fully ſenſible that her ſituation required all her prudence and vigour. She entered into negociations with the king of Navarre; ſhe diſpatched Sir Thomas Bodley to treat with the King of Denmark, and with the proteſtant princes of Germany; and ſhe reſolved to proceed in gaining completely to her ſide the King of Scots, and to eſtabliſh a permanent authority in his kingdom *.

She propoſes a league offenſive and defenſive to the King of Scots.

In concert with the Maſter of Gray, Sir Lewis Bellenden, the juſtice clerk, and Sir John Maitland, the brother of Lethington, who had been promoted to be principal ſecretary of ſtate, ſhe deputed Sir Edward Wotton to Scotland. This ſingular man, to profound knowledge and a maſterly diſcernment in affairs, added the moſt ſeducing and agreeable qualifications. He had a complete command of his temper, and could accommodate himſelf to perſons of every diſpoſition. He immediately penetrated into the character of James, who having been prepoſſeſſed to his advantage, conceived ſoon the higheſt opinion of his abilities and merit. It was not only by his wiſdom and his talents that he drew the admiration of James. He recommended himſelf to him by his mirth and pleaſantry, his expert-

* Camden, p. 504. Spotſwood, p. 338.

neſs

Book VII. 1585. neſs in languages, his acquaintance with the manners and cuſtoms of different countries, and his ſkill in horſemanſhip and the chaſe. Impenetrable himſelf, he carried a quick eye to the young monarch; and in the hours of paſtime as well as of buſineſs, he advanced in the purpoſes of his embaſſy. He was active to impreſs James with an opinion that the friendſhip of Elizabeth was ſincere and cordial; and, in the name of his miſtreſs, he preſented him with a yearly penſion of five thouſand pounds. This bribe, from the manner in which it was beſtowed, loſt ſomewhat of its meanneſs. For Elizabeth affected to conſider James as her ſon; and while the revenue ſhe conferred upon him was as large as that which her father had allotted to her, it was regarded as a compenſation for her retaining in her cuſtody the Engliſh eſtate of the counteſs of Lennox. But whatever art might be employed to flatter him into an acceptance of it, the conſequence was moſt favourable to the Queen of England, as it diſpoſed him to comply with her wiſhes, and rendered him in ſome degree dependant upon her pleaſure. Sir Edward Wotton, accordingly, when he pointed out to him the dangers which threatened the reformed religion, and explained the expediency of a league offenſive and defenſive againſt the popiſh powers, was attended to with the greateſt ardour. The ſecret view of deſtroying his mother, the Queen of Scots, which had the greateſt influence over Elizabeth, was overlooked by James, from inattention or with deſign. A convention of the three Eſtates was aſſembled; and the propoſal of an alliance with England to uphold the Reformation, was laid before them. They agreed that the combination of the Roman Catholic ſtates to ſubvert the true religion, was a wicked and unlawful project; that

that it had been long in agitation; that being now openly manifeſted, it ought to be oppoſed by all the proteſtant ſtates with unanimity and vigour; and having reſolved that the two crowns of Scotland and England, which had already ſo many ties of connexion, ſhould be inſeparably united in the ſtrongeſt and the firmeſt amity, they granted full liberty to James and his council, to tranſact and conclude a ſtrict and Chriſtian league with Elizabeth, and bound themſelves to ratify and confirm it *.

She diſcouMiſtreſs, engaged himſelf in other intrigues. rages his marriage.

Sir Edward Wotton, by the command of his Ambaſſadors had arrived in Scotland from the king of Denmark, on the pretence of laying claim to the iſles of Orkney and Shetland, but with the intention of procuring the marriage of James to one of the daughters of their ſovereign. By Sir Thomas Bodley, whom Elizabeth had ſent to Denmark to treat againſt the popiſh league, ſhe had received information of this project; and ſhe was infinitely averſe from the marriage of the Scottiſh monarch. Wotton, while he paid a moſt reſpectful attention to the Daniſh ambaſſadors, did not ſcruple to inſinuate to them that James made their king, their country, and its cuſtoms, the topics of deriſion and contempt. When converſing with James, he aſſumed a ſimilar liberty, and was laviſh in abuſing the king of Denmark, and his ambaſſadors. The earl of Arran, the maſter of Gray, Sir Lewis Ballenden, and Sir John Maitland, aſſiſting the practices of Wotton, behaved to them with coldneſs and neglect. They ſuſpected the policy of Elizabeth, and perceived that in the preſent condition of the Scottiſh affairs, they could not urge with advantage, the purpoſes of their embaſſy. But though

* Melvil, Memoirs, p. 317. Sporſwood, p. 340.

they

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they were highly diſpleaſed with their treatment, and were inſtigated to depart without taking leave of the King, they had the prudence or the phlegm not to expoſe their diſcontents; and Sir James Melvil, while he reprobated the practices which had been employed to defeat their commiſſion, and to provoke their anger, gave them repeated aſſurances that his maſter knew how to value the amity of their nation *.

She acts for the diſcontented nobles, and endeavours to overthrow the earl of Arran.

The great object, however, which Wotton had in view, was to operate the return of the Scottiſh nobles. With this intention, he applied all the powers of his capacity and addreſs to ſubvert the earl of Arran, who was their determined enemy. This miniſter was already odious in the greateſt degree over the kingdom; and the other favourites of James, who envied his greatneſs, and hated him, had ſold themſelves to Elizabeth. The maſter of Gray, Sir Lewis Ballenden, and Sir John Maitland gave their aid to Wotton; and the earl of Arran found it difficult to reſiſt ſo powerful a combination. They were unanimous and vehement in exclaiming to the King againſt the dangerous councils of the earl of Arran; and they held out to him the impopularity to which he was expoſed, from the wicked and flagitious character of that nobleman. They were aſſiduous, at the ſame time, in extolling the advantages and weight which he might derive from the exerciſe of his clemency to the diſcontented lords. Their natural ſtrength and conſequence, the affectionate regard which they had obtained with the people, and the pleaſure which his favour to them would afford to Elizabeth, were all ſet before him in the ſtrongeſt colours. Intimations of the proceedings in their behalf were ſent

* Melvil, Memoirs, p. 323. 330.

to

to them by Wotton; he counſelled them to reconcile themſelves to lord John Hamilton, and to his brother Claud, who were at this time in England; and Elizabeth giving them her encouragement and advice, it was concerted that they ſhould prepare and be in readineſs to embrace a proper opportunity to return to Scotland, in order to recover their eſtates, and their importance*.

She takes advantage of a riot upon the borders.

Theſe purpoſes were conſiderably promoted by an encounter which now happened upon the borders. Sir John Foſter, and Thomas Ker, of Ferniherſt, the wardens of the middle marches of the two kingdoms, had met for the hearing of complaints, and the deciſion of diſputes. Mutual proclamations were made according to cuſtom, that no perſon ſhould injure another by word, deed, or look. The Scots advanced to the rendezvous to the number of three thouſand, with their enſigns diſplayed, and in array of battle. The Engliſh amounted not to three hundred perſons. When the wardens had taken their ſeats as judges, an Engliſhman was detected in the act of theft; and a tumult ariſing, a party of the Scots diſcharged a volley of ſhot, and killed Sir Francis Ruſſel, the eldeſt ſon of the earl of Bedford. The Engliſh having recourſe to flight, were purſued for four miles, and ſome priſoners were taken. Ker, the Scottiſh warden, being related to the earl of Arran, and a partizan for the Queen of Scots, Elizabeth affected to conſider this encounter as a project which they had meditated. She accordingly preſſed James to ſurrender them to her as delinquents; and it was ſpread induſtriouſly over Scotland that they were friendly to the Roman Catholics, and to the popiſh league. James, though he avoided to com-

* Spotſwood, p. 340. Camden, p. 504.

Book VII. 1585. ply with her requeſt, found it expedient to proceed againſt them. The earl of Arran was committed to the priſon of St. Andrews; but was ſoon after allowed to confine himſelf to his palace of Kinneill. Ker of Fernihersſt, was put into cuſtody at Dundee; and being of a haughty ſpirit, died there of vexation and chagrin. The diſcontented lords were not long in being in motion; and they were aſſiſted with large ſums of money by Elizabeth. Wotton, inſpirited by his ſucceſs, and diſpoſed to ſtrike an overwhelming blow againſt the King, engaged in a plot to ſeize upon his perſon, and either to convey him into England, or to keep him a priſoner in the Caſtle of Stirling. But his device and treachery being diſcovered, he left Scotland with the greateſt precipitation *.

The return of the diſcontented nobles.

The King was informed that the diſcontented nobles were entering his dominions; and the earl of Arran having now obtained his liberty, was in haſte to collect an army to oppoſe them. Proclamations were iſſued, which commanded the ſubjects of Scotland to aſſemble in arms at Crawfurd Caſtle. Colonel Stuart undertook to march to the borders, and to diſperſe the rebels, before they could be ſtrong from the approach and acceſſion of their adherents. But his activity, as well as that of the earl of Arran, was ſtudiouſly interrupted by the maſter of Gray, Sir Lewis Ballenden, and Sir John Maitland. The rebels were joined at Linton by Francis Stuart, earl of Bothwel, Maxwel, earl of Morton, the lord Hume, and by other nobles and perſons of diſtinction. They publiſhed a manifeſto, in which they declared that they had taken arms for the defence of the Goſpel, for the deliverance of the

The humiliation of the earl of Arran.

* State Papers, vol. A. p. 188. Johnſton, Hiſt. Rer. Britan. lib. iii. Melvil, Memoirs, p. 334, 335.

King from corrupt counſellors, and for the preſervation of the amity with England. In their march, they were flattered with the reſpect which was every where ſhewn to them; and every day they were ſtrengthened by the voluntary aid of the more zealous among the proteſtants. When they arrived at Falkirk, the earls of Angus and Marre muſtered their force, and found themſelves at the head of eight thouſand combatants. The King and the earl of Arran were now at Stirling; and the diſcontented nobles advanced to it. The earl of Arran kept guard in the town, and unable to oppoſe them, ſought for ſafety in flight. They inveſted the King in the caſtle, which was not in a condition to ſuſtain a ſiege. The maſter of Gray and Sir John Maitland, offered to negociate an accommodation with the diſcontented nobles. The terms they required were hard and humiliating; but they could command them. They were admitted to the preſence of James, and received a full remiſſion of their offences. The earls of Montroſe, Crawfurd, and Rothes, were ordered into the cuſtody of the lord Hamilton. The earl of Arran was deprived of all his honours. The command of the King's guard was given to the maſter of Glamnis. The Caſtle of Dunbarton was entruſted to the lord Hamilton. The earl of Marre was reſtored to the governorſhip of the Caſtle of Stirling. The earl of Angus returned to his command of Tantallon; and the keeping of the Caſtle of Edinburgh was beſtowed upon Sir James Hume *.

The parliament of England takes a part

Elizabeth, whoſe policy and perſeverance were almoſt always crowned with ſucceſs, was, in the mean time, exerciſing her addreſs over the three

* Spotſwood, p. 342, 343. Camden, p. 505.

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Eſtates of her kingdom. They did not often diſpute her commands; and to her jealouſy and reſentments to the Queen of Scots, her ſubjects had been accuſtomed ſo long, that they appear to have loſt their proper ſenſibility of their atrociouſneſs and turpitude. The parliament of England, which ought never to have violated the integrity of juſtice, which ought conſtantly to have attended to the dictates of humanity, and which ought, at all times, to have been ſuperior to the artifices of deceit, did not ſcruple to adopt the boiling choler of her paſſions, and even to point out the method by which ſhe might advance to their fulleſt gratification. It declared itſelf a party to the aſſociation for the protection of the life of Elizabeth, which had been inſidiouſly projected by the earl of Leiceſter, the lord Burleigh, and Sir Francis Walſingham, and to which the greateſt art had been employed to allure the ſubſcriptions of all orders of men. It ordained, that if an attempt ſhould be made to the hurt of Elizabeth, by or through any perſon, having or pretending to have a title to the crown of England, it ſhould be lawful for her to grant a commiſſion under the great ſeal to twenty-four members of her privy council, or of the houſe of peers, to inquire into it, and to give ſentence or judgment. It enacted, that all perſons againſt whom their ſentence ſhould be pronounced, ſhould be excluded and diſabled for ever from their claims or titles to the crown and realm of England; and it commanded that it ſhould be lawful to all the ſubjects of Elizabeth to purſue them and their abettors to death by all forcible and poſſible means *. This ſtatute was moſt flattering to one Queen, and moſt ſanguinary to another. But while it ſtruck againſt the life of

In the reſentments of Elizabeth againſt the Queen of Scots.

A remarkable ſtatute.

29 November.

* Statutes at large.

Mary,

Mary, and againſt her rights of ſucceſſion, it affected to overturn the moſt certain and eſtabliſhed maxims of the policy of nations. It made a ſovereign and independent princeſs anſwerable for her conduct to the ſubjects of another potentate. This abſurdity did not eſcape the penetration of the counſellors of Elizabeth; but without giving way to it, there was no poſſibility of conducting Mary to the ſcaffold under the ſemblance of legal formalities.

Elizabeth perſecutes the Roman Catholics.

This parliament, which was ſo inclement to the Queen of Scots, exerciſed a rigorous ſeverity againſt the Roman Catholics. It was ordained that all Jeſuits and popiſh prieſts ſhould depart out of England; and that if they ſhould reviſit her dominions, they ſhould be conſidered as guilty of treaſon. It was made felony to give them harbour and aſſiſtance; and all the ſubjects of Elizabeth, who were beyond the ſeas for the benefit of education in popiſh ſchools, were commanded to return home. To ſend relief to prieſts beyond the ſeas, or to ſtudents in foreign ſeminaries, was ſubjected to perpetual exile, and the confiſcation of goods. It was enacted, that if any perſon ſhould ſend his child abroad without the licence of the Queen, he ſhould forfeit the ſum of one hundred pounds; and it was declared that every perſon who ſhould know that Jeſuits and prieſts were concealing themſelves in the kingdom, and ſhould neglect to diſcover them, ſhould be fined and impriſoned at the pleaſure of the Queen *. Theſe laws ſpread apprehenſion and terror among the papiſts. Philip Howard, earl of Arundel, the eldeſt ſon of the duke of Norfolk, reſolved to leave England, and to go into a voluntary exile. He addreſſed a letter to Elizabeth, in which he informed her, that his

* Statutes ap. Ruffhead, vol. ii. p. 633, 634.

Book VII. 1585. adverſaries, who had great power, were determined to triumph over his innocence. He recounted the misfortunes of his anceſtors, and complained that his father had been circumvented by the treachery of her miniſters, and beheaded for light and trivial matters. He wiſhed not, he ſaid, to be the heir of the infelicity of his Houſe; and he had abandoned his country, that he might enjoy his religion in ſecurity and peace. It was his intention that his letter ſhould not have been delivered till after his departure. But his ſervants being unfaithful, he was apprehended in Suſſex, and committed to the Tower. Henry Percy, earl of Northumberland, was, at this time, confined in the ſame priſon; and being conſcious of guilt, believing that his integrity could not protect him againſt the tyranny of the court, or being willing to purchaſe, by an injury to himſelf, an exemption to his family from the misfortunes of an attainder, he applied a piſtol to his breaſt, and ſhot himſelf with three bullets*.

James calls a parliament.

The revolution effected in Scotland by Queen Elizabeth and the diſcontented nobles, was the reſult of a deep contrivance, and produced no bloodſhed or ſtruggle. But the nobles did not conſider themſelves as ſecure till the three Eſtates ſhould give a ſanction to the lenity of the King. A parliament was aſſembled at Linlithgow, which propoſed to eſtabliſh the public tranquillity, and to aboliſh the memory of former miſunderſtandings. The pardon of the nobles, and their reſtoration to their eſtates and honours, were completely ratified and confirmed. The King diſcovered the moſt ſincere inclinations for peace and for the proſperity of his kingdom; and the earls of Angus and Marre, and their faction, were too ſenſible of their own delinquen-

10 December.

* Camden, p. 594.

cies,

cies, to puſh with obſtinate ſeverity their reſentment againſt their adverſaries. An ordination was paſſed, which made it death for any perſon to defame the King or his government, and to miſinterpret his laws or proceedings with the intention of exciting a rupture between him and his nobility. It was enacted, that all leagues and conventions of men which were without his conſent and approbation, were illegal, and that thoſe who combined in them ſhould be puniſhed as movers of ſedition and diſturbers of the national quiet. An act was alſo paſſed, which conſulted the dignity of the crown, and called back to it the property which had been impetrated or obtained unreaſonably from the King and his immediate predeceſſors *. Book VII. 1585.

To the clergy, the reconciliation of the King and the diſcontented nobles, was a moſt acceptable circumſtance; and they prognoſticated from it the greateſt advantages to their order. They diſpatched deputations to Linlithgow to ſolicit the overthrow of epiſcopacy, and the repeal of the ordinations, which, during the preceding year, had been paſſed to their prejudice. But though the nobles had employed them to ſtir up the paſſions of the people, and had even engaged to aſſiſt them, they yet abſtained from any interference in their affairs. They ſent them to the King, who treated them with infinite contempt, and did not ſcruple to beſtow upon them the appellation of ſeditious knaves †. To the nobles they returned in a furious rage, and were admoniſhed that the proper ſeaſon for a reformation of their grievances was not yet arrived, and that the King was much pleaſed with the government of biſhops. Mr. John Howiſon exclaimed againſt Eccleſiaſtical affairs

* Stat. James VI. Parl. 1585. c. 10. 12. 17. † Calderwood, p. 187.

Book VII. 1585. the court from the pulpit; Mr. William Watſon imitated his example; and Mr. James Gibſon exceeding them both, affirmed from it, that the King was a perſecutor of the goſpel, and denounced againſt him the curſe which fell on Jeroboam, that he ſhould die childleſs, and be the laſt of his race. This licentiouſneſs eſcaped not obſervation; and theſe clergymen were committed to priſon during the pleaſure of the King. The people, as uſual, were riſing into ferments; and James in a conference with the principal miniſters, deſired them to enumerate the acts with which they were diſſatisfied, and to preſent to him, in writing, their exceptions to them. By their commiſſioners they laid before him a laborious paper which they termed "Animadverſions of offences conceived upon the acts of "parliament made in the year 1584." James, whoſe character began now to diſplay itſelf, was ſeized with the ſpirit of diſputation, and did the miniſters the honour to frame and ſubſcribe a reply to their animadverſions, which is intitled, "The King's declaration and interpretation of "his acts of parliament, ſet forth in May 1584." The miniſters praiſed God for the judgment and knowledge of the King, but expreſſed it as their opinion, that ſo weighty a cauſe as the eſtabliſhment of an eccleſiaſtical polity, which might endure to all ages, ought to be more deeply digeſted; and it was agreed, that this ſubject ſhould be debated in the enſuing aſſembly of the church *.

1586. April. It was believed, that Patrick Adamſon, archbiſhop of St. Andrews, had projected the ſtatutes from which the preſbyterian clergy were ſo averſe; and he found himſelf expoſed to the

* Spotſwood, p. 343. Calderwood, p. 188. 193.

full

full ſeverity of their diſpleaſure. In a ſynod which met at St. Andrews, Mr. James Melvil accuſed him of being ſwollen with the venom of ambition, of exerciſing a tyrannical ſupremacy over the church, and of having ſuggeſted the ſtatutes which had paſſed againſt it. He proteſted that he did not acknowledge their judicature; and while he urged, that the biſhops were one of the three Eſtates, he affirmed that he did not deviſe the ſtatutes in queſtion, but had only voted for them as good and lawful acts. He took the liberty, at the ſame time, to obſerve, that theſe topics were of too high a moment to be canvaſſed by them; and he appealed from any ſentence they might decree, to the King and the parliament. They reviled him as a corrupt and monſtrous member of the church; and it was carried that he ſhould ſuffer the puniſhment of excommunication. Mr. Robert Wilkie, the moderator, refuſed, however, to pronounce the ſentence; and the ſynod, in confuſion, was about to diſſolve, when Mr. Andrew Hunter calling out that he was warned by the Spirit to perform this duty to the church, proceeded immediately to exerciſe it. The next day, the archbiſhop, in revenge, commanded Mr. Samuel Cunnyngham to pronounce the ſentence of excommunication againſt Mr. Andrew and Mr. James Melvil, and againſt other miniſters who had been particularly hoſtile to him. A general aſſembly was convened at Edinburgh; and this diſpute attracting its attention, a compromiſe took effect, by which it appeared, that the archbiſhop was ſo temporiſing as to make a ſacrifice of his character for his repoſe; and that the moſt obſtinate ſticklers for orthodoxy can depart without a bluſh from the ſanctimonious laws of rectitude and probity. The archbiſhop was prevailed upon ſolemnly to deny

Book VII. 1586.

10 May.

Book VII. 1586. deny that he had claimed any ſupremacy, or pretended to judge over other miniſters and paſtors, to confeſs that he was to blame for his imperious behaviour in the ſynod of St. Andrews, to promiſe that he would behave leſs offenſively for the future, to beg pardon for his paſt tranſgreſſions, to engage that he would aſſume no farther juriſdiction than was conſiſtent with the word of God, and to agree to ſubmit to the general aſſembly without contradiction or appeal. Upon the other part, the miniſters conſented to conſider the proceedings againſt the archbiſhop as undeduced, and the ſentence as unpronounced. He thus, in effect, received an abſolution; and the aſſembly reſtored him to his former condition. Mr. Andrew Hunter, however, who pretended to have been warned by the holy Spirit to pronounce the form of excommunication, proteſted againſt his acquittal, and affirmed, that he ſtill held him to be juſtly delivered over to Satan. To this proteſtation there adhered Mr. Andrew Melvil, and Mr. Thomas Buchanan *.

This aſſembly diſtinguiſhed itſelf by other acts which deſerve to be recorded. Preſbyteries which had crept into uſe before the year 1584, when epiſcopacy was revived, were acknowledged to be in force; and their order and number were adjuſted. It was reſolved, that no perſon ſhould vote in the general aſſembly, but paſtors, doctors, and elders; and it was judged, that the name of biſhop ſhould never more be underſtood as in the popiſh times, but be applicable to all miniſters whatſoever. It was decreed, that as a biſhop was a common paſtor or miniſter, he ſhould be ſubject to the juriſdiction of the general aſſembly, and ſhould anſwer to it for the regularity of

* Johnſton, Hiſt. Rer. Britan. lib. iii. Calderwood, p. 211. Spotſwood, p. 348.

his

his life, and the ſoundneſs of his doctrines. It was alſo declared, that where biſhops reſided, they ſhould be moderators in the meetings of preſbyteries and ſynods. Theſe acts were not made without altercation and debates; and the appearances of moderation they diſcover, were produced in conſequence of the management of the court. Sir John Maitland, who ſince the flight of the earl of Arran, had acted as chancellor, finding the King to be diſturbed with the refractory ſpirit of the clergy, adviſed him to leave them implicitly to the fury of their paſſions; for that then they would grow ſo inſupportable, that the offended people would riſe up againſt them, and expel them from the country. You counſel wiſely, ſaid James, if it were my wiſh to overturn religion and the church; but I deſire to retain both; and cannot endure that the clergy ſhould run into ſuch exceſſes and diſorders, as would make religion an object of contempt, or of ridicule *. Book VII. 1586.

The influence of Elizabeth in the court of Scotland was now more powerful than that of James himſelf; and his miniſters were eager to conclude the treaty of alliance which had been opened and advanced by the intrigues of Sir Edward Wotton. The court of France, alarmed with the operations of the Engliſh Queen, had diſpatched Deſneval to James, to prevent, if poſſible, his termination of any ſtrict league with Elizabeth. But this ambaſſador repreſented to him in vain, that the Engliſh princeſs ſought his friendſhip not out of any reſpect to him, but that ſhe was actuated with fears leſt the popiſh powers ſhould prove too ſtrong for her. It was alſo to no purpoſe that he threatened him with a total diſſolution of the old

A league of ſtrict amity is concluded with England.

* Spotſwood, p. 348.

amity

Book VII. 1585. amity of France, from which Scotland had received ſo many advantages. James was more attentive to Randolph, whom Elizabeth had ſent to him to adjuſt the articles of their intended confederacy; and this miniſter amuſed him with the hope that his miſtreſs would embrace an early opportunity to aſſure him, that ſhe would never take any ſtep to the prejudice of his titles to the crown of England. This flattering conceſſion was even propoſed to be the ſubject of a private agreement between Elizabeth and James. To the articles of treaty which Randolph preſſed upon the part of Elizabeth, no objections were made; and it was reſolved that commiſſioners ſhould meet at Berwick, to give them the tie and ſanction of legal formalities. There appeared for Elizabeth, Edward earl of Rutland, William lord Evers, and Mr. Thomas Randolph; and James appointed as his repreſentatives, Francis earl of Bothwel, Robert lord Boyd, and Sir James Hume. The alliance they concluded was termed a league of "ſtricter amity;" and its tenor correſponded in a peculiar degree with the ſituation and the views of Elizabeth. The project entered into by the Roman Catholic princes to extirpate the pure and evangelical religion, and the neceſſity which of conſequence had ariſen for its defence, were pointed out as the real and efficient cauſes of this alliance. It was covenanted, that Elizabeth and James ſhould be bound by this ſocial and ſacred league to provide for the preſervation of the proteſtant faith; and that they ſhould employ their diligence to induce other powers to confederate with this holy and pious intention. It was accorded, that their league ſhould be both for defence and offence againſt all perſons of whatſoever deſcription who ſhould oppoſe the reformed religion in the two

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kingdoms. In the event of an invaſion from abroad, either of England or Scotland, it was agreed, that they ſhould abſtain from affording any aid or counſel, directly or indirectly, to the invaders; and that in this extremity they ſhould forget and diſregard every tie of conſanguinity or affinity, alliance or amity, by which they might be bound to foreign ſtates. It was contended, that if England ſhould be invaded in thoſe parts which are remote from Scotland, James ſhould immediately, on receiving an intimation from Elizabeth, march into her dominions, upon her expence, two thouſand horſe, and five thouſand foot; and that if the enemy ſhould land in the northern diſtricts of England, within ſixty miles of the Scottiſh frontiers, he ſhould collect and put in motion the greateſt force in his power. In the event of an invaſion of Scotland, Elizabeth engaged herſelf to furniſh to James, an army of three thouſand horſe, and ſix thouſand foot, to be employed at his pleaſure, and to be maintained upon his charge. It was ſtipulated, that the King of Scots, when certified of any diſturbances in Ireland, ſhould prohibit the inhabitants of the county of Argyle from repairing to that kingdom with hoſtile intentions. They became mutually engaged not to aſſiſt any rebels or traitors, or to permit their ſubjects to afford them any harbour or maintenance; and they conſented to deliver them up upon the firſt requiſition, or to expel them from their dominions. They embraced the reſolution to appoint commiſſioners to compound and adjuſt all injuries and controverſies among the borderers by a friendly compenſation and treaty *. They expreſſed it as their determined purpoſe not to contract any confederacy, or to enter into any alli-

* Camden, p. 514. Spotſwood, p. 350.

ance

Book VII. 1586.

ance with any prince, ſtate, or combination of men, to the violation or prejudice of their preſent union. They reſpectively bound themſelves to confirm and ratify this ſacred league by their oaths, and by letters patent under their great ſeals. All former treaties, contracts, and agreements between their predeceſſors, were declared to be in force and vigour, in ſo far only as they did not derogate from the ſtricter amity of their new alliance. In fine, the King of Scots, upon attaining the age of twenty-five years, obliged himſelf to tranſmit to Elizabeth a parliamentary ratification of it; and in return, ſhe contracted to procure confirmations of it from the Eſtates of her kingdoms of England and Ireland *. It was the greateſt joy to Elizabeth, that this treaty was brought to a termination. All her apprehenſions on the ſide of Scotland were now at an end. In the tranſport of her ſatisfaction, ſhe addreſſed a letter to James with her own hand, in which ſhe intimated to him, that he might not only depend upon the regular payment of his annual penſion; but that he might reſt in ſecurity, that ſhe would ſuffer no attempt to take place, which might impair or overthrow his eventual ſucceſſion to her dominions †.

Archibald Douglas, one of the murderers of the lord Darnley, obtains a pardon, and is advanced by James to be his ambaſſador to Elizabeth.

James, who ought not to have concluded any league with Elizabeth without the participation of Mary, or without ſtipulations to her advantage, was, about this time, ſeduced into meaſures which were ſtill more ſhameful and indecent. Mr. Archibald Douglas had been deeply concerned with the earls of Bothwel, Morton, and Murray, in the murder of the lord Darnley. The proofs of his guilt were incontrovertible. By the confeſſion of the earl of Morton it ap-

* Rymer, Fœdera, vol. xv. p. 803. 807. State Papers, vol. B. p. 344. † Spotſwood, p. 351.

peared,

peared, that he was not only a party to the conſpiracy againſt the King's father, but that he had aſſiſted at his murder. John Binning, his own ſervant, who was executed as a regicide, had alſo given a teſtimony againſt him in the moſt clear and expreſſive form; and there were other evidences of his criminality. When the earl of Morton was impriſoned, he accordingly fled to England under the conſciouſneſs of his crimes. There he was protected by Elizabeth; and having inſinuated himſelf into ſome degree of favour with Caſtelnau, the French ambaſſador, he affected to court the favour of Mary by the offer of his ſervices, and by endeavouring to juſtify his conduct*. He was, however, far more ſucceſsful

* In the apology he addreſſed to her he agrees with the confeſſion of the earl of Morton in freeing Mary from any foreknowledge or privity in the conſpiracy againſt her huſband. "The earl of Morton repaired into Scotland to Quhittingaime, "where the earl of Bodvell and ſecretary Ledington came to "him: what ſpeech paſſed there among them, as God ſhall "be my judge, I knew nothing at that time, but at their de- "parture I was requeſted by the ſaid earl Morton to accom- "pany the earl Bodvell and ſecretary to Edinburgh, and to "return with ſuch anſwer as they ſhould obtain of your Ma- "jeſty; which being given to me by the ſaid perſons, as God "ſhall be my judge, was no other than theſe words, 'Schaw "to the earl Morton that the Queen will hear no ſpeech of "that matter appointed unto him:' when I crafit that the an- "ſwer might be made more ſenſible, ſecretary Ledington ſaid, "that the earl would ſufficiently underſtand it, albeit few or "none at that time underſtood what paſſed among them. "It is known to all men, als veil be railing letters paſſed be- "twixt the ſaid earl and Ledington when they became in di- "vers factions, as alſo ane buik ſett furth by the miniſters "wherein thay affirm that the earl of Morton has confeſſed to "them, before his death, that the earl Bodvel came to Quhit- "tingaime to prepon the calling away off the King your huſ- "band, to the which prepoſition the ſaid earl of Morton af- "firms that he could give no anſwer unto ſuche time he might "know your Majeſtie's mind therein, which he never received. "As to the abominable murder it is known too by the depoſi-

"tions

Book VII. 1586. ful in recommending himſelf to the Engliſh Queen and her miniſters *; and when the diſcontented nobles were in exile in England, he had won their cordiality by aſſiduities and attention. Upon their return to Scotland, they undertook to procure his pardon from James. Nor was it long before he received a particular mark of their kindneſs. They tranſmitted to him, from his

" tions of many perſons that were executed to the death for " the committing thereof, that the ſame was executed by them, " and at the command of ſuch of the nobility as had ſubſcrivit " band for that effect; by this unpleaſant declaration, the moſt " part known to yourſelf, and the remainder may be under- " ſtood by the aforeſaid witneſſes that was examined in torture, " and that are extant in the cuſtody of the ordinary judges " in Scotland, my innocency ſo far as concerning any fact " does appear ſufficiently to your Majeſty. And as for my " dealing aforeſaid, I can be no otherwiſe charged therein, " but as what would accuſe the veſſel that preſerves the wine " from harm, for the intemperancy of ſuch as immoderately " uſe the ſame." Robertſon's Appendix, p. 359.

From this confeſſion of Mr. Archibald Douglas, which is far from being a juſtification of him, it is to be inferred, that beſide the artful conduct of the conſpirators in the conference with Mary at Craigmillar, they had alſo attempted in vain, at Edinburgh, to allure her into their views. In both caſes, the manner of their proceedings was doubtleſs cautious, and not only under the ſhow of the moſt cordial friendſhip for her perſon, and the moſt anxious regard for her happineſs and proſperity, but under the affectation of their own diſintereſtedneſs. The firmneſs of her virtue did not fail to diſcompoſe them. Hence the eagerneſs with which they confederated; and hence the formality of the bond which they ſubſcribed as the tie of their union.

* The influence which Douglas had obtained in the court of Elizabeth appears to have been great and remarkable. In a diſpatch he received from Randolph there is the following paſſage. " As for your maſterſhip that governeth the whole " world, remember always your poor friends to do them all " the good you can. Retain me in her Majeſty's favour by " ſome courſe of honeſty, that you may let fall when you are " in talk with her. Keep me in favour and credit with my " lord of Leiceſter and Mr. ſecretary, Et eſto tu meus, quan- " do ego ſum tuus." Maidſtone 25th July 1585. Thomas Randolph to Mr. Archibald Douglas. Murdin, p. 554.

ſovereign,

ſovereign, letters of rehabilitation, that eſtabliſhed him in his rank of an honeſt man and a good citizen, by taking away the effect of the act of parliament by which he was forfeited as a murderer and a traitor *. He was in haſte to reviſit his own country; and a commiſſion was granted to put him to the knowledge of an aſſize. He drew up his own indictment; a ſelect jury inquired into his concern in the murder of the lord Darnley; and the maſter of Gray, its chancellor, who was his moſt particular friend, announced his integrity and innocence †. All the orders of men

Book VII. 1586.

* Spotſwood, p. 348.

† There is a letter from Randolph to Mr. Archibald Douglas, in which he alludes to his guilt and his pardon, and in which he points to his nomination to be ambaſſador to the court of England. It is ſingular, and expreſſed in a ſtrain of great levity.

"Domine, non adhuc ſacroſancte. I long to hear how you "have preached to the Carrs *, and how far your eloquence "can perſuade about the Queen's my miſtreſs favorable offer, "or their obedience to the King. It is written or reported to "Mr. ſecretary Walſingham that they are gone to the hills. "If my authority was as great as the Queen of England's is, "then ſhould neither hill nor holde keep them; but it ſhould "be too hotte for them to remayn in either. When you are "ſanctified, as in the honourable eſtate of an ambaſſador, you "will know more than yet I will either ſpeak or write. Mr. "ſecretary is advertiſed of ſuch doings and alterations lyke "preſently to be, as though ten myllions of men were to be "ſlayne in a day among you. As I ſee no ſuche likelyhoode, "ſo have I written to the contrary. Look to your own per-"ſon that you bring it ſhortly ſacroſanctified into England. "Beware of the craft of the Arranſees, and hatred of the "Carrs; for hereupon dependeth the ſtate of your welfare, "ſanctification or reprobation. As notable a piece of knavery "has byin of late wrote againſte my ſanctitie, *in eſſe*, and "yours *in propinquo*, as any cunninge knave in Scotland could "ever have wrought.

"I have ſent the Kyng two hunting men, verie good and "ſkilfull, with one footman that can hoop, hollow, and crye,

* He points probably to their concern in the diſturbances upon the borders.

Book VII. 1586. men were ſhocked and inſulted by theſe proceedings. But James, abuſed by his miniſters, did not perceive the diſgrace and the ridicule to which he was expoſing himſelf. They even precipitated him into a tranſaction which ought to have been ſtill more alarming to his pride, his virtue, and his intereſt. They prevailed with him to repoſe a confidence in Douglas; and he did not heſitate to nominate one of the aſſaſſins of his father, to be his ambaſſador to England, and to entruſt him with the management of his moſt important affairs *. His people glowed with indignation and with ſhame; and Elizabeth, while ſhe contemned the prince, who could be the

"that all the trees of Fawkland will quake for fear. Pray "the Kynge's Majeſtie to be merciful to the poor bucks; but "let him ſpare and look well to himſelf. Your lordſhip's to "command, Tho. Randolph." "At Newcaſtle the 5th off "Auguſt 1586. To the Right Honorable Mr. Archibald "Douglaſſe, Eſq; prior of Glaſeguho." Murdin, p. 558.

* In a letter, at this time, from King James to Naw, the ſecretary to the Queen of Scots, whom he ſolicits to attempt a reconciliation between Mary and the counteſs of Shrewſbury, there is the following paſſage. "Le ſurplus de ma volonté "vous ſera plus au long expoſée par noſtre *fidel & bien aymé* "ſerviteur Archibald Douglas, lequel à vous envoyé pour "traitter nos affaire en ce pays la auquel il vous plaira d'ad-"jouſter *foy comme à nous meſme.*" Murdin, p. 568.

The ſtyle in which the lord Burleigh wrote to Mr. Douglas is the moſt reſpectful. To a diſpatch of his, which yet remains, the addreſs is in theſe words. "To the right honour-"able, my verie loving frend Mr. Archibald Douglas, am-"baſſador for the King of Scotte." See State Papers, vol. A. p. 239. From the great reſpect which was paid to Mr. Archibald Douglas, by Elizabeth and her miniſters, it ſeems natural to infer, that his abilities were uncommon. Yet I muſt acknowledge, that in the diſpatches of his which have been preſerved, I can diſcern no certain proofs of penetration or ability. I am thus rather induced to imagine, that in the courſe of his political practices he had obtained the truſt of important ſecrets; and that his demerit was the real ſource of his conſequence. They flattered the man who had it in his power to betray them, and who was unſcrupulous.

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dupe of his favourites, ſolaced herſelf with her talents for intrigue. She had advanced to be reſident at her court, the man, whoſe title to that important ſtation, was unpromiſing and prepoſterous in the wildeſt degree, and whom the King of Scots ought moſt peculiarly to have debarred from it; but whoſe meanneſs, corruption, and crimes, fitted him the moſt completely, to promote and foſter her flagitious policy *. Book VII. 1586.

* Johnſton, Hiſt. Rer. Britan. lib. iv.

THE HISTORY OF SCOTLAND.

BOOK VIII.

Book VIII. 1586.

The rise and progress of Babington's conspiracy.

THE English seminary at Rheims was distinguished by the most illiberal superstition; and the omnipotency of the Pope, was one of the tenets which obtained more peculiarly its admiration and reverence. It venerated of consequence, in the greatest degree, the bull which Pius V. had issued against Elizabeth. A fancy came thence to prevail, that this remarkable decree had proceeded directly from the inspiration of the Holy Ghost. To put to death those princes who were excommunicated, was accordingly inculcated as an act of the highest merit, and as even superior to the glory of martyrdom. To die in such an attempt, was extolled as an atchievement the most acceptable to Heaven. No road, it was said, could lead the devout christian to an immortal life with such a triumphant security. These romantic and absurd conceptions had impressed themselves in a particular manner on the minds of one Gifford, a doctor of divinity,

divinity, and of Gilbert Gifford, and Hodgeſon, two prieſts. They concurred in preſſing their opinions upon John Savage, who united in his perſon the moſt frantic zeal, and the moſt heroic courage. Diſregarding the ties of humanity and juſtice, and profaning the formalities of religion, he vowed to aſſaſſinate Elizabeth; and in order to aſſiſt his deſign, by taking away all ſuſpicion of it, they compoſed and publiſhed a book, in which the Engliſh papiſts were admoniſhed to employ no weapons againſt that princeſs but tears, argument, mortification, and prayer.

John Ballard, a prieſt of the ſame ſeminary, had been ſent into England to remark the diſpoſition and ſtate of the Roman Catholics; and about this time he had returned to France. His viſit to England did not eſcape the penetration of Sir Francis Walſingham; and this miniſter, who was ſignally zealous againſt the Queen of Scots, had commanded Maud, a man of profound artifice and diſſimulation, to inſinuate himſelf into his favour, and to affect a compliance with his views and projects. To this aſſociate, Ballard communicated his moſt ſecret purpoſes; and he had even made him a party to the councils and deliberations which he had holden with the enemies of Elizabeth. In his journey to France he was not forſaken by Maud, whoſe profeſſions and friendſhip appeared to be ſtrenuous and ſincere; and there they made it known, that the Roman Catholics of England were earneſt to take her crown from Elizabeth. Mendoza, the Spaniſh reſident at Paris, liſtened to them with attention; and it was judged, that there could not be a more fortunate opportunity for invading England. The moſt martial troops of that nation had been ſent to the Netherlands, under the command of the earl of Leiceſter; and while their

Book VIII. 1586. abſence enfeebled Elizabeth, an attack upon her kingdom would contribute efficaciouſly to diſtreſs the councils, and to humble the pride of the United Provinces. It was imagined, that Elizabeth was now in a ſituation in which ſhe could not reſiſt the union and vigour of the Pope, the Spaniard, the duke of Guiſe, and the prince of Parma. Charles Paget alone, whoſe attachment to the Queen of Scots was moſt ſanguine, and whoſe abilities were equal to it, revolted from theſe ſentiments. He affirmed, that while Elizabeth was alive, it was altogether vain to think of invading her dominions. His opinion, however, was neglected as ill founded and ſingular; and Ballard was diſpatched anew to England, to foſter the diſcontents of the Roman Catholics, to prepare them for an inſurrection, and to give them the aſſurance, that a foreign army would ſoon realize all their happieſt wiſhes, by overturning the reformed doctrines, and by placing Mary Stuart upon the throne of Elizabeth *.

At London Ballard diſguiſed himſelf like an officer, and took the name of captain Forteſcue. Among the Roman Catholics with whom he chiefly aſſociated, there was Antony Babington of Dethic, in Derbyſhire. This gentleman, though in early youth, was diſtinguiſhed by his ability and learning. His zeal for popery was notwithſtanding exceſſive; and a little before this time he had made an excurſion to France without the licence of the Queen. There he got acquainted with the archbiſhop of Glaſgow, the ambaſſador of Mary, and with Thomas Morgan. By frequent and lofty eulogiums upon her heroical virtues, and upon the graces, the elegance, and the cultivation of her perſon and her mind, they inflamed his youthful imagination. He became

* Murdin, p. 516. 518. Camden, p. 515.

deſirous

deſirous to perform ſome exploit to her advantage; and in their letters to her, they recommended him in the warm language of affection and friendſhip. Upon his return to England, Morgan had even employed his agency in the conveyance of diſpatches to Mary; and in this buſineſs he had continued his ſervices till her commitment to the care of Sir Amias Paulet and Sir Drue Drury. When Ballard opened to him the project of the invaſion of England, he ſignified the pleaſure it would give him to aſſiſt in the humiliation of Elizabeth, but concurred in thinking with Charles Paget, that all attempts againſt her dominions would be unavailing, while ſhe was permitted to live. Ballard, pleaſed with his forwardneſs, informed him, that ſhe could not live long; for that John Savage was now in London, watching an opportunity to aſſaſſinate her. The ſuperſtitious bigotry of Babington, had ſteeled his breaſt to the feelings of humanity, and to the dictates of honour. He envied Savage the ſanguinary wickedneſs of plunging a dagger into the body of his ſovereign; and, on the pretence that the murder might miſcarry by being entruſted to a ſingle hand, he inſiſted, that ſix gentlemen of unſuſpected courage, ſhould aſſociate themſelves for its ſurer execution. It was agreed, that Savage ſhould be one of theſe, that he might not incur the guilt of breaking the vow he had made to diſpatch the Queen of England; but ſo completely had this man corrupted his ſenſibilities and his underſtanding, that Ballard and Babington found it difficult to induce him to allow to others any participation in the glory he had propoſed to himſelf. They diſcovered their views to a great many gentlemen of the Roman Catholic perſuaſion; and the moſt eminent of their friends were Edward, brother to the lord

Book VIII. 1586. Windſor, Thomas Saliſbury of Denbighſhire, Charles Tilney, the only hope of an ancient houſe, Chidioc Tichbourn of Southampton, Edward Abingdon, whoſe father had been coffcrer of the Queen's houſhold, Robert Gage of Surrey, John Travers and John Charnock of Lancaſhire, John Jones, whoſe anceſtor had been keeper of the wardrobe to Queen Mary, Patrick Barnwel, who was deſcended of a noble family in Ireland, and Henry Dun, clerk in the office of firſt fruits and tenths. Robert Polly, one of the ſpies of Sir Francis Walſingham, was alſo admitted to their particular diſtinction; and although they were warned to beware of him by Naw, the ſecretary to the Queen of Scots, his diſſimulation and apparent ardour to forward their deſigns, baniſhed every ſuſpicion to his prejudice. Babington choſe for himſelf the taſk of giving liberty to the Queen of Scots, at the head of a choſen band of followers. Tilney, Tichbourn, Abingdon, Barnwel, Charnock, and Savage, took a ſolemn oath to aſſaſſinate Elizabeth. The other chiefs of the conſpiracy were to repair to different counties, and to call up the papiſts to arms. Conferences were repeatedly held by them in taverns, where amidſt jollity and feaſting, they invigorated their paſſions, and fed themſelves with the hope of conſpicuous honours. They ſtimulated their courage by the example of the Scottiſh nobles, who had ſeized the King at Stirling, and by that of Gerard the Burgundian, who had murdered the Prince of Orange. In the diſtraction produced by the preſumption of confidence, the encouragement of converſation, and the giddy folly of intemperance, they ventured to procure a painting, in which the aſſaſſins were repreſented, with Babington in the midſt of them, and which was adorned with mottos expreſſive

preſſive of their combination *. Polly, who revealed all their tranſactions to Walſingham, communicated to him this painting; and it was ſhown privately to Elizabeth †.

In this ſtage of the conſpiracy, Babington was anxious to obtain the fulleſt aſſurance for the invaſion of England by a foreign army. He reſolved, accordingly, to go to France; and for this purpoſe he begged a licence to travel from ſecretary Walſingham, to whom he was introduced by Polly. To this miniſter he profeſſed an extreme admiration of Elizabeth; and he promiſed his aſſiduous ſervices in diſcovering the plots of the Engliſh exiles in France. Walſingham beſtowed the greateſt commendations upon his loyalty, and intimated that he might ſoon expect the licence for which he had applied. But he amuſed him, notwithſtanding, with artifice and delays. Gilbert Gifford, in the mean time, had been diſpatched to London by the Engliſh exiles, to remind Savage of the vow he had made, and to remain there as their agent. Licentious manners and habits of expence, had prepared this eccleſiaſtic for corruption; and his piety and zeal were unable to reſiſt the bribes of Walſingham, whom Maud and Polly had informed of his arrival, his character, and his purpoſes. He forgot that the bull of Pope Pius V. had been inſpired by the Holy Ghoſt; and permitting himſelf to be conducted with great privacy, to the Engliſh ſecretary, he made a full diſcovery to him of whatever he either knew, or ſuſpected.

Elizabeth and her miniſter were now poſſeſſed of ample and ſufficient documents concerning the

The artificial conduct of Elizabeth and ſecretary Walſingham.

* Hi mihi ſunt comites, quos ipſa pericula ducunt,
* * * * * *
Quorſum hæc, alio properantibus?

† Johnſton, Hiſt. Rer. Britan. lib. iv. Camden, p. 516. Murdin, p. 570.

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Book VIII. 1586. conſpiracy; and at this period they would have taken its projectors into cuſtody, if to defeat their deſigns, and to puniſh them, had been the only purpoſes in which they had been intereſted. But they were likewiſe looking to an object of the higheſt moment to them, and for which they had prepared with infinite duplicity and precaution. They ardently deſired to involve the Queen of Scots in the guilt of Babington and his aſſociates, in order to create a pretence or occaſion for executing againſt her the laſt act of ſeverity and vengeance. Mary had been removed to the caſtle of Chartley in Staffordſhire; and to this place Walſingham diſpatched Gifford, with inſtructions to commence a correſpondence with her. To facilitate this buſineſs, he wrote a letter to Sir Amias Paulet, requeſting him to permit Gifford to bribe one of his ſervants. Paulet, however, from jealouſy or from virtue, refuſed to grant this requeſt; and Gifford corrupted a brewer in the neighbourhood, who put his letters to Mary in a hole in the Caſtle wall. By the ſame conveyance it was expected that anſwers would be received to them. Mary, however, had been ſecretly admoniſhed by her friends in France, not to take any ſteps in this conſpiracy, but moſt anxiouſly to avoid all intelligence with its projectors *. She was ſufficiently acquainted with

* Thomas Morgan, who, next to Charles Paget, was the moſt penetrating partizan of the Queen of Scots, gave her the following caution, in a diſpatch from Paris. "There is one "Ballard, a preſte of moch travel in that contry [France] and "well diſpoſed to your ſervice, which he is like to offer to "your Majeſty, for the which, if he do ſo, you may thanke "him with few lines; yett I muſt tell your Majeſty, for the "diſcharge of my owne dutye and ſervice towards your Ma- "jeſty, which I ſhall never fayle you by God's power, that "the ſayd Ballard followeth ſome matters of conſequence "there, the iſſue whereof is uncertayne. Wherefore as long "as

with the unrelenting hatred of the Engliſh Queen; and when ſhe conſidered, as in connection with it, the ſcheme of the aſſociation, and the ſucceeding act of the Engliſh parliament, ſhe was alarmed with a deep conviction that a pretext only was wanted to conclude her diſtreſſes by taking away her life. She was not in a humour to give any countenance to uncertain and hazardous projects; and the letters of Gifford, it is to be conceived, were unobſerved or neglected by her; for there exiſts not the ſlighteſt evidence from which it is to be inferred that ſhe had attended to them. This diſappointment was moſt afflicting to Walſingham; but it did not diſcourage his activity. Naw and Curl, the ſecretaries of Mary, were ſtrangers, and in a ſtate of uneaſy and precarious dependence. The treaſury of Elizabeth was full and powerful *. It was contrived that anſwers in the name of the Queen of Scots to the letters of Gifford, ſhould be found

" as theſe labours of his and matters be in hande, it is not for " your Majeſty's ſervice to *hold any intelligence with him at all*, " for feare, leſt *he* or *his partners* be diſcovered, and they by " paynes or other accidentes, diſcover your Majeſty afterwards " to have had *intelligence* with them, *which I wolde not ſholde* " *fall oute for any goode in the world*, and I have ſpeciallye " warned the ſaid Ballard not to deale at any hande with your " Majeſty, as long as he followeth the affayrs that he and " others have in hande." 4th July. Murdin, p. 527.

It is probable that cautions were likewiſe given to the more noble and diſtinguiſhed friends of Mary not to interfere in this conſpiracy. No perſon accordingly of high rank or great importance gave any ſanction to it. The counteſs of Arundel, the lord Lumley, the lord Henry Howard, and George Shirley, who were all moſt ſtrenuous in the intereſt of Mary, refuſed abſolutely to have the moſt diſtant participation in this plot. See Camden, p. 516.

* It is remarkable that Elizabeth, notwithſtanding her œconomy, offered ten thouſand pounds ſterling for the life of Thomas Morgan, when he was a priſoner in France. See Murdin, p. 472. It was far more her intereſt to gain over to her Naw and Curl.

in

Book VIII. 1586. in the hole of the Caſtle wall. By this method it was eaſy to multiply evidences to her prejudice; and in her ſuppoſed packets to Gifford, there were encloſed letters from her to Babington, Mendoza, the lord Paget, Charles Paget his brother, the archbiſhop of Glaſgow, and Sir Francis Ingleſield. Walſingham, to whom theſe letters were carried, affected formally to decypher them, by the aid of Thomas Philips, a perſon who was known to be ſkilful in matters of this kind; and after exact copies were taken of them, it is ſaid they were all artfully ſealed up, and ſent away to be delivered according to their ſuperſcriptions *. It appears, however, that only the letters to Babington were ſent to him. This might be managed by the contrivance of Gifford; and the diſpatches from him in return to the Queen of Scots, were by the ſame agency communicated to Sir Francis Walſingham.

A foundation being now eſtabliſhed upon which to build the guilt of the Queen of Scots, it was not neceſſary to delay any longer the ſuppreſſion of the conſpiracy. An order was therefore iſſued for the apprehenſion of Ballard. The conſpirators were thrown into amazement; but it being underſtood that he was ſeized as a popiſh prieſt, and not as a plotter, their uneaſineſs abated. Babington, in the firſt moments of his terror, counſelled Savage and Charnock to execute inſtantly the murder. Departing, however, from this reſolution, he preſſed Sir Francis Walſingham more earneſtly than ever for a licence to travel; but this artful ſtateſman renewing his careſſes, affected a deſire to have other conferences with him upon the ſubject of his intended journey. He even allured Babington to lodge in his houſe; and by this means he had the ſecureſt op-

* Camden, p. 517.

portunity

portunity of putting a watch upon him. In this state of things, Walſingham addreſſed a note from the court to Scudamore, a companion of Babington's, whom he had engaged to carry a penetrating eye to his motions. This note was an advice to him to redouble his diligence in attending to his charge; and when he received it, Babington being ſeated with him at the ſame board, peruſed it along with him. A conviction that all his practices were now diſcovered, ſtruck this conſpirator; and he could diſguiſe with difficulty the anguiſh of his troubled mind. He haſtened to give the alarm to his aſſociates; and all of them took to flight. But Windſor alone was able to elude every ſearch. The reſt being dragged from their hiding places, were committed to priſon; and as their confeſſions contained impeachments of one another, there aroſe a complete evidence of their criminal views and combination. Ballard, Babington, Savage, Barnwel, Tichbourn, Tilney, and Abington, were executed with unuſual cruelty. They were hung up upon a gallows; and being cut down while yet alive, their bowels were taken out, and their bodies were quartered. The ſame ſentence was paſſed againſt Saliſbury, Dun, Jones, Charnock, Travers, and Gage, but their execution was leſs horrid. For they hung till they were quite dead, and were then embowelled, and divided by the hatchet. Maud, Polly, and Gifford, who had acted as aſſiſtants to ſecretary Walſingham, were treated with commendation; and their ſervices did not paſs unrewarded *.

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The Engliſh miniſters were loud in their reproaches againſt the Queen of Scots. They aſcribed to her the infamy of promoting and encouraging

Mary is charged w th the guilt of Babington's conſpiracy.

* Johnſton, Hiſt. Rer. Britan. lib. iv. Camden, p. 518.

BOOK VIII. 1586. couraging Babington and his aſſociates in their ſcheme of aſſaſſinating Elizabeth; and they kept alive the terror of an impending invaſion. The people were affected with apprehenſions for their ſovereign, their country, and their religion. The popularity of Mary was deeply wounded; and men of great talents were active to haſten its decay. It was ſounded abroad, that the wiſdom of the aſſociation to protect the life of the Engliſh Queen, was now moſt apparent, and that its intentions ought ſpeedily to be realized. Her royal perſon, it was ſaid, had been thrown into peril; and it remained that the vow ſhould be fulfilled which had been made to proſecute to death, and utterly to exterminate all perſons of whatſoever rank they might be, who ſhould counſel, conſent, or act to her hurt and overthrow. Elizabeth and her miniſters diſſeminated the language of complaint and revenge; it was echoed back by the people; and the friends of Mary were convinced that the plot which had been framed for her deſtruction would immediately be executed.

She is carried to Fotheringay Caſtle; her papers and money are ſeized; and her ſecretaries are arreſted.

In the mean while, the Scottiſh princeſs, eagerly watched by Paulet, and altogether unacquainted with the late occurrences, and with the abuſive declamations of her enemies, received a viſit from Sir Thomas Gorges. This envoy, as inſtructed by Elizabeth, ſurprized her when ſhe had mounted her horſe to take the pleaſure of the chace. His ſalutation was abrupt and unceremonious; and after informing her of the diſcovery and circumſtances of the conſpiracy of Babington, he rudely charged her with a concern in it. Her aſtoniſhment was great, and ſhe deſired to return to her chamber. But this favour was refuſed to her; and after being carried from one houſe to another, in an anxious and perplexing

ing uncertainty, ſhe was committed to Fotheringay Caſtle in Northamptonſhire. Naw and Curl, her two ſecretaries, the former a Frenchman, the latter a native of Scotland, were taken into cuſtody. Paulet breaking open the doors of her private cloſet, poſſeſſed himſelf of her money, which amounted not to more than ſeven thouſand crowns. Her cabinets were carefully ſealed up, and being ſent to London, were examined in the preſence of Elizabeth. They contained many diſpatches from perſons beyond the ſea, copies of letters which had been dictated by her, and about ſixty tables of cyphers and characters. There were alſo diſcovered in them many diſpatches to her from Engliſh noblemen, which were full of admiration and reſpect. Theſe Elizabeth concealed; but their authors ſuſpecting that they were known, ſought to purchaſe her forgiveneſs by the moſt abject proteſtations of an attachment to her perſon, and by the exerciſe of the moſt inveterate enmity to the Queen of Scots. Naw and Curl declared that the copies of her letters were in their hand-writing. They had been dictated by her in the French language to Naw, tranſlated into Engliſh by Curl, and then put into cypher.† They contained not, however, any matters with which ſhe could be reproached or criminated*. It was upon the foundation of the letters which Gifford had communicated to Walſingham, that her guilt was to be inferred; and with copies of theſe, and with an atteſted account of the conſpiracy of Babington and his aſſociates, Sir Edward Wotton was now diſpatched into France, to acuſe her to Henry III. and to explain to him the dangers to which Elizabeth was expoſed, from the machinations and practices of the Engliſh exiles †.

* Camden, p. 518. † Ibid.

The

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The privy counſellors of Elizabeth deliberated upon the moſt proper method of proceeding againſt Mary. To ſome it appeared, that as ſhe was only acceſſory to the plot, and not the deſigner of it, the moſt eligible ſeverity to be exerciſed againſt her was a cloſer and more rigorous confinement; and they endeavoured to fortify this opinion by obſerving, that ſhe was ſickly, and could not live long. By others, who were haunted by the terrors of popery, it was urged, that ſhe ought to be put inſtantly to death by the formalities of the law. The earl of Leiceſter recommended it as moſt prudent to diſpatch her ſecretly by poiſon. But this counſel was rejected as mean, diſgraceful, and violent. The lawyers were of opinion that ſhe might be tried upon the ſtatute of Edward III. by which it was enacted to be treaſon to imagine the deſtruction of the ſovereign, to make war againſt his kingdom, or to adhere to his enemies. Elizabeth, however, and her miniſters, had provided a more plauſible foundation for her trial. This was the parliamentary ſtatute approving the act of aſſociation. As it had been paſſed while Mary was in England, it was argued that ſhe was bound by it in a local allegiance to Elizabeth. The next point of debate was the deſignation under which it was moſt adviſeable to arraign her. To employ a foreign name and title as directly deſcriptive of her, was not judged to be conſiſtent with the law of England. It was therefore reſolved to deſign her "Mary, daughter and heir of James V. King "of Scotland, and commonly called Queen of "Scots, and Dowager of France *."

A reſolution is taken to proceed againſt her by a public trial.

She addreſſes a letter to the duke of Guiſe.

Mary, in the mean time, notwithſtanding the rigour of her confinement at Fotheringay Caſtle, had found an opportunity to diſpatch a meſſenger

* Johnſton, Hiſt. Rer. Britan. lib. iv. Camden, p. 519.

to the duke of Guiſe with a letter, informing him of her misfortunes. "I am accuſed, ſaid "ſhe, of having engaged in a conſpiracy againſt "the ſtate of England and the life of Elizabeth; "but of this conſpiracy I knew nothing. The "Engliſh miniſters pretend to have proofs of my "criminality; but what theſe are I cannot con-"jecture. They can have no foundation that is "more ſolid than their own invention, and the "power of the rack. My death is doubtleſs de-"termined, and cannot be at a great diſtance. "The Engliſh Queen and her counſellors will "kill me by poiſon, or with the dagger. Com-"mand that prayers ſhall be ſaid for me; and "take my poor ſervants under your protection. "It is with difficulty that I hold my pen, from "a pain and inflammation in my arm; but it "will pleaſe you to learn from me that my mind "is devoted to you; and that under the hardeſt "misfortunes and extremities, I will ſupport "with conſtancy my religion, and the honour of "the Houſe of Lorraine. I beg, that when I "am no more, you will take the charge of ap-"plying for my body. It will conſole me to "think that it is to repoſe at Rheims, in holy "ground, near the ſepulchre of my mother; "and it is my wiſh, that my heart ſhould be de-"poſited in the grave of my huſband Francis II. "May the Almighty God prolong your life, that "you may ſerve him; and to me may he give "his grace in this world, and his mercy in the "next*."

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A commiſſion was iſſued by Elizabeth to above forty peers or privy counſellors, with five judges, beſtowing upon them in a body, or to the major part of them, abſolute power and authority to

Elizabeth appoints commiſſioners to try her.

* Jebb, vol. ii. p. 284.

Book VIII. 1586. inquire into the matters compaſſed and imagined againſt her by the Scottiſh princeſs; and to judge and pronounce ſentence according to the ſpirit and tenor of the ſtatute which had been paſſed, approving the act of aſſociation. Of theſe commiſſioners, a great majority proceeded to the caſtle of Fotheringay; and the day after their arrival, they deputed to Mary, Sir Walter Mildmay, Sir Amias Paulet, and Edward Barker, a public notary, to deliver to her a letter from Elizabeth. In this letter the Engliſh Queen gratified her unhappy paſſions, and after reproaching Mary with her crimes, informed her that commiſſioners were appointed to take cognizance of them. The Scottiſh princeſs, though aſtoniſhed with the project of being brought to a public trial, was able to preſerve her dignity, and addreſſed them with a compoſed manner and air. "It is a matter, ſaid ſhe, altogether uncommon and ſtrange, that Elizabeth ſhould command me to ſubmit to a trial, as if I were her ſubject. I am an independent ſovereign, and will not tarniſh by any meanneſs my high birth, the princes my predeceſſors, and my ſon. Misfortunes and miſery have not yet ſo involved me in dejection, as that I am to faint and ſink under this new calamity and inſult. I deſire that you will remember what I formerly proteſted to Bromley, who is now lord chancellor, and to the lord La War. To ſpeak to me of commiſſioners, is a vain mockery of my rank. Kings alone can be my peers. The laws of England are unknown to me; and I have no counſellors, to whoſe wiſdom I can apply for inſtruction. My papers and commentaries have been taken from me; and no perſon can have the perilous courage to appear as my advocate. I have indeed recommended myſelf

Mary is informed of this circumſtance, and objects to their juriſdiction.

12 October.

"myſelf and my condition to foreign princes; "but I am clear of the guilt of having conſpired "the deſtruction of Elizabeth, or of having in- "cited any perſon whatſoever to deſtroy her. It is "only by my own words and writings that an "imputation of this kind can be ſupported; and "I am conſcious, beyond the poſſibility of a "doubt, that theſe evidences cannot be employ- "ed againſt me." The day after ſhe had, in this manner, refuſed to allow the juriſdiction of the commiſſioners, Paulet and Barker returned to her, and informed her that they had put her ſpeech into writing, and deſired to know if ſhe would abide by it. She heard it read diſtinctly, acknowledged it to be rightly taken, and avowed her readineſs to perſiſt in the ſentiments ſhe had delivered. But, ſhe added, there was a circumſtance to which ſhe had omitted to ſpeak. "Your "Queen, ſaid ſhe, affects in her letter to obſerve "that I am ſubject to the laws of England, be- "cauſe I have lived under their protection. This "ſentiment and mode of thinking are very ſur- "priſing to me. I came into England to crave "her aſſiſtance and aid, and ever ſince I have "been confined to a priſon. The miſeries of "captivity cannot be called a protection, and "the treatment I have ſuffered is a violation of "all law." In the afternoon, a new deputation from the commiſſioners waited upon her. Sir Thomas Bromley the lord chancellor, and Burleigh the lord treaſurer, endeavoured to juſtify the authority of the commiſſioners; and appealed to the patent by which they were conſtituted. She pleaded anew her royal eſtate, and her independence of the ſovereignty and the laws of England. She told them that ſhe conſidered herſelf as already condemned and adjudged to die; and as a proof of her opinion, ſhe referred them

Book VIII. 1586. to the ſtrain and meaning of the letter ſhe had received from Elizabeth. The nomination of commiſſioners ſhe derided as no better than a device for the purpoſe of giving a colour or ſhow of legality to the cruelties intended to be exerciſed againſt her; and ſhe counſelled them not to fancy that the infamy of the proceedings to her ruin would be confined within the kingdom of England. It would be becoming in them, ſhe ſaid, to look into their conſciences, and not raſhly to expoſe their miſtreſs and themſelves to deteſtation and ſcorn upon the theatre of the whole world. The lord chancellor and the lord treaſurer were diſconcerted with her magnanimity; and returned to conſult with the commiſſioners. Within a few hours, Sir Amias Paulet, and Egerton the ſolicitor to Queen Elizabeth, were ſent to impart to her the names of the commiſſioners, and the powers which were committed to them. To the commiſſioners themſelves ſhe did not offer any exception; but after conſidering their commiſſion, ſhe obſerved that its authority depended entirely upon a ſtatute which had been framed with the criminal intention of operating her deſtruction. She accordingly deſired Paulet and Egerton to reflect, that when they employed their ſolicitations to make her ſubmit to it, they were engaged in a buſineſs that was not only moſt wickedly unjuſt, but moſt wildly abſurd. At the ſame time ſhe admoniſhed them, that the letter of Elizabeth was an irrefragable voucher that ſhe was forejudged to be guilty of the crimes imputed to her, and that a reſolution was already taken to accompliſh her ruin. The lord chancellor and the lord treaſurer were again deputed to her, and were attended by Hatton the vice-chamberlain. She repeated her former declarations, and demanded to know what they could under-

underſtand by affirming that ſhe was under the protection of Elizabeth. The lord chancellor ſaid, that "this expreſſion was plain to every "one who underſtood any thing; but that it was "not for ſubjects to interpret what the Queen's "meaning was, and that they were not commiſ- "ſioners appointed for that end." To this equivocal and ſlaviſh reply, ſhe did not deign to give any return. She required that the proteſtation which ſhe had made, and which had been committed to writing, ſhould be allowed. It was anſwered, that it had never been admitted, and that it was not poſſible to receive it, becauſe it was prejudicial to the crown of England. Diſſatisfied with their artifice and contempt of ſincerity, ſhe aſked with ſome heat, "By what autho- "rity do you preſume to proceed?" They told her that their authority was their commiſſion, and the common law of England. Their commiſſion, ſhe ſaid, was an act of injuſtice and tyranny; and as to the common law of England, it could ſhow no ordination which could apply to her, and no precedent or caſe which had the moſt diſtant ſimilarity to her condition. To appeal to it was of conſequence a diſhoneſt pretence, and a confirmation of the cruelty intended to her. The late ſtatute upon which the commiſſion reſts, did not, ſhe ſaid, deſerve the name of a law; for it was nothing more than a ſnare or toil which had been made to circumvent her; and rather than ſubmit to it, ſhe was diſpoſed utterly to periſh. Hatton, the vice-chamberlain, addreſſed himſelf to her with an artful formality, and the affectation of a tender and impoſing ſincerity. "Ma- "dam! You have been accuſed, but are not con- "demned, of having conſpired the death of our "Lady and anointed Sovereign. You affirm that you "are a Queen. But waving any diſcuſſion of that

BOOK VIII. 1586. "point, it is fit to remember, that with regard "to the crime with which you are charged, the "royal dignity itſelf is not exempted from chal- "lenge, by the civil and canon laws, nor by "thoſe of nations or of nature. For if ſuch "offences could be committed with impunity, "juſtice would not only ſuffer, but be annihi- "lated. If you are innocent, and ſhall yet avoid "a trial, you muſt be an enemy to your own re- "putation. You proteſt loudly your innocence; "but Elizabeth eſteems you to be guilty; and is "infinitely ſorry that there ſhould be any reaſons "to juſtify her in this opinion. It is with a view "to inquire into your conduct that ſhe has ap- "pointed commiſſioners. They are men of pru- "dence and probity, and will attend to your de- "fence with equity and favour. They will re- "joice in the greateſt degree to have it in their "power to declare and aſſert your innocence. "The Queen herſelf will be tranſported with "gladneſs to hear that you have vindicated your- "ſelf; for believe me, I received from her upon "my departure, the ſolemn aſſurance, that no- "thing could trouble her more than that ſuch "high miſdemeanors ſhould be imputed to you. "Lay aſide, therefore, I entreat you, your claim "of privilege as a Queen. It will be diſregard- "ed, and cannot be of any ſervice to you. Ap- "pear before the commiſſioners; and acting upon "your defence, make known your integrity and "honour. By an oppoſite behaviour, you will "do more than expoſe yourſelf to ſuſpicion; "you will ſully your fame, and permit your me- "mory to deſcend with infamy to poſterity." Mary liſtened to his ſpeech with attention; and aſſured him, that ſhe would not ſcruple or heſi- tate to vindicate herſelf in a full parliament, be- fore the three Eſtates of England, if, upon de- monſtrating

monſtrating her innocence, ſhe ſhould be declared the next in ſucceſſion to Elizabeth. She even propoſed an overture that was ſtill more favourable to her enemies. She expreſſed her willingneſs to appear before Elizabeth and her privy council, upon the conditions, that her proteſtation ſhould be admitted, and that after eſtabliſhing her integrity, ſhe ſhould be declared the neareſt in kin to the Engliſh Queen. But ſhe continued reſolute in affirming, that ſhe would not attempt to juſtify herſelf before men whom her adverſaries had choſen to be her judges; becauſe the ampleſt and moſt ſatisfactory defence could be of no avail to her. The lord chancellor inquired, "Whether ſhe would anſwer to the "commiſſioners if her proteſtation ſhould be al-"lowed?" "I can never, ſaid ſhe, acknowledge "the juſtice or authority of the ſtatute upon "which the commiſſion is founded." My lord Burleigh growing warm, and being unable to overcome her with argument, exclaimed, "We "notwithſtanding ſhall proceed to-morrow to "your trial; and although you ſhould be abſent "and refractory, we ſhall pronounce our judg-"ment." "In a priſon and in fetters, replied "Mary with indignation, I cannot pretend to "reſiſt the law of force, or to repreſs the inſo-"lence of tyranny. But I deſire you to ſearch "into your conſciences, and to pay a reſpect to "the principles of virtue and honour; and I call "upon you to recollect, that the Almighty God "will judge you by the integrity or the turpi-"tude of your actions *." Book VIII. 1584.

She paſſed the night under the anxieties and agitation of thoughtfulneſs and uncertainty. She might maintain her reſolution not to acknowledge Her trial.

* Camden, p. 520, 521. Johnſton, Hiſt. Rer. Britan. lib. iv.

Book VIII. 1586. the authority of the commiſſioners; but ſhe was ſenſible that ſhe could not prevent them from proceeding to her trial, and from pronouncing their judgment. Her abſence, while it might excite a ſuſpicion to her prejudice, might inflame their reſentment, and diſpoſe them to an inordinate ſeverity. She revolved the ſpeech of Hatton; and its apparent generoſity affected her. The unanimity and concert of ſo many perſons of high rank and diſtinction to her ruin, did not in this ſituation of her mind appear to her to be probable. A ſentiment of pride, and the conſciouſneſs of innocence, overpowered her opinion of the treachery and corruption of her enemies. She could not conceive what evidence could be produced to her prejudice. A comfortable and raviſhing hope of victory took poſſeſſion of her. It diminiſhed the juſt terror, and looſened the rooted apprehenſions which ſhe ought to have entertained of the Engliſh Queen. She tried to reconcile herſelf to the indignity of appearing before the commiſſioners; and this ſacrifice to her honour ſhe thought might be excuſed from the peculiarities of her ſituation. The confidence of virtue induced her to detract from her own grandeur, and to tarniſh the glory of her predeceſſors and her nation. By a ſtrenuous reſolution to reject the authority of the commiſſioners, and to refuſe to preſent herſelf before them, ſhe might have preſerved unimpaired the greatneſs of royalty and the dignity of her ſubjects, without impeaching her innocence. But while ſhe yielded to the honourable weakneſs of deſcending from her condition, under the impreſſion of upholding her fame, it ought to be remembered, that ſhe acted the part to which ſhe would never have conſented, if ſhe had been torn and diſquieted with the conſciouſneſs of guilt.

Prepa-

1586.

Preparations were already made for the trial of Mary, when it was announced to the commiſſioners, that ſhe was willing to appear before them. They aſſembled in the great hall of Fotheringay caſtle. In the upper extremity of it there was placed a chair for Elizabeth under a canopy of ſtate. Oppoſite to it there ſtood a chair for the Queen of Scots. Near the walls there were benches in a regular order; and upon the one ſide, there were ſeated the lord chancellor Bromley, the lord treaſurer Burleigh, with the earls of Oxford, Kent, Derby, Worceſter, Rutland, Cumberland, Warwick, Pembroke, Lincoln, and the lord viſcount Montacute. Upon the other ſide there were ranged the barons Abergavenny, Zouch, Morley, Stafford, Grey, Lumley, Stourton, Sandes, Wentworth, Mordant, St. John of Bletſoe, Compton, and Cheney. Adjoining to theſe there ſat the knights who were of the privy council, Sir James Crofts, Sir Chriſtopher Hatton, Sir Francis Walſingham, Sir Ralph Sadler, Sir Walter Mildmay, and Sir Amias Paulet. Before the earls there appeared the lord chief juſtices Wray and Anderſon, the juſtice Periam, with Dale and Ford, two doctors of the civil law. In the middle of the apartment, at a little table, there were ſeated Popham the Queen's attorney, Egerton her ſolicitor, and Gawdy her ſerjeant, with the clerk of the crown, and two notaries. Mary entering the great hall with the dignity which ſuited her rank, and the modeſty which became her ſex, took the place aſſigned to her. Silence being commanded, the lord chancellor turning to her expreſſed himſelf to this purpoſe. "Our moſt ſerene ſovereign Elizabeth, being "aſſured that you have conſpired her death, the "deſtruction of her kingdom, and the overthrow "of the proteſtant religion; and being altoge-

"ther

The meeting of the commiſſioners.

The lord chancellor opens the caſe.

Mary remonſtrates againſt the cruelty and injuſtice of her treatment.

Book VIII. 1586. "ther unmoved by any principle or motive of hatred "or malice; has, according to her duty and ſtation, "and leſt ſhe might be thought to neglect God, "herſelf, and her people, appointed commiſſion-"ers to hear the matters which are to be objected "to you, and to judge of your defence." Mary riſing up deſired him to obſerve, that by preſenting herſelf before the commiſſioners of Elizabeth, ſhe did not mean to acknowledge any ſuperior right in that princeſs. She proteſted her independency, and inculcated her wiſh that her conduct might not be interpreted to be prejudicial to her royal dignity, and to the grandeur of her ſon and his ſucceſſors. She admoniſhed him to recollect, that ſhe had come into England under the allurement of a promiſe of aid; and that her ſenſibility under injuſtice and injury, and the conſciouſneſs of innocence, had compelled her to appear in her preſent ſituation. She commanded him not to fancy that ſhe was inclined to degrade herſelf and the condition of royalty; but that, animated with an extreme ardour to refute and wipe away the crimes imputed to her, ſhe had ſubmitted to preſent herſelf before men, upon whom it was not poſſible to beſtow any legal authority to inquire into her actions. The lord chancellor would not acknowledge that ſhe had been invited into England by promiſes of friendſhip and protection; but inſiſted that her declaration was injurious to the laws and honour of Elizabeth. The commiſſioners, however, were unwilling to diſcuſs this delicate point; and affecting a compromiſing neutrality, ordered her declaration and the anſwer to it to be recorded. The commiſſion was now read aloud; and it appealed in its boſom to the act of parliament which had been framed according to the ſpirit and ſenſe of the aſſociation in behalf of Elizabeth. Mary having

having reprobated with magnanimity and courage, the atrocious and inclement nature of this act, proteſted againſt it as being ſchemed and fabricated directly to her prejudice. Raiſing her voice, ſhe then called upon the commiſſioners to lay their hands upon their breaſts, and to contradict her. My lord Burleigh replied with a criminal and acrimonious pertinacity, "That every "perſon in the kingdom was bound by the laws "at whatſoever time, and upon whatſoever occa- "ſion they were framed; that it was improper in "her to ſpeak againſt them; that the commiſſi- "oners were reſolved to proceed according to the "purpoſes of the ſtatute to which ſhe had ob- "jected; and that it was utterly vain for her to "make any proteſtations or appeals *." Book VIII. 1586.

Serjeant Gawdy opened up the ſtatute at large, and endeavoured to demonſtrate that ſhe had offended againſt it. He then entered into a detail of Babington's conſpiracy, and concluded with this ſtrong affirmation, "That ſhe knew it, had "approved it, had promiſed her aſſiſtance, and "had pointed out the means to effect it." Proofs of this charge were exhibited againſt her, and diſplayed with great art. The letters were read which Sir Francis Walſingham had forged, in concert with Maud, Polly, Gifford, and her ſecretaries Naw and Curl. The three ſpies had afforded all the neceſſary intelligence about the conſpiracy, upon which to frame a correſpondence between Mary and Babington, and upon which diſpatches might be fabricated in her name to her foreign friends; and the cyphers were furniſhed by her two ſecretaries. But beſide theſe pretended letters, another ſpecies of evidence was held out againſt her. Babington, proud of The accuſation is preferred againſt her.

* Johnſton, Hiſt. Rer. Britan. lib. iv. Camden, p. 522.

the

BOOK VIII. 1586. the diſpatch ſent to him in her name by Walſingham and Gifford, returned an anſwer to it; and a reply from her, by the ſame agency, was tranſmitted to him. Deluded and in toils, he communicated theſe marks of her attention to Savage and Ballard, the moſt confidential of his aſſociates. His confeſſion and theirs became thus of importance. Nor were her letters and the confeſſions of theſe conſpirators deemed ſufficient vouchers of her guilt. Her two ſecretaries, therefore, who had lately forſaken her, were engaged to ſubſcribe a declaration, that the diſpatches in her name, were written by them, at her command, and according to her inſtructions. Theſe branches of evidence, put together with ſkill, and heightened with all the impoſing colours of eloquence, were preſſed upon Mary. Though ſhe had been long accuſtomed to the perfidious inhumanity of her enemies, her amazement was infinite. She loſt not, however, her courage; and her defence was alike expreſſive of her penetration and magnanimity.

Her defence.

"The accuſation preferred to my prejudice, "is a moſt deteſtable calumny. I was not en- "gaged with Babington in his conſpiracy; and "I am altogether innocent of having plotted the "death of Elizabeth. The copies of Babing- "ton's letters which have been produced, may "indeed be taken from originals which are genu- "ine; but it is impoſſible to prove that I ever "received them. Nor did he receive from me "the diſpatches addreſſed to him in my name. "His confeſſion and thoſe of his aſſociates, which "have been urged to eſtabliſh the authority of "my letters to him, are imperfect and vain. If "theſe conſpirators could have teſtified any cir- "cumſtances to my hurt, they would not ſo ſoon "have been deprived of their lives. Tortures,

"or

" or the fear of the rack, extorted improper
" confeſſions from them; and then they were ex-
" ecuted. Their mouths were opened to utter
" falſe criminations, and were immediately ſhut
" for ever, that the truth might be buried in
" their graves *. It was no difficult matter to
" obtain cyphers which I had employed; and my
" adverſaries are known to be ſuperior to ſcru-
" ples. I am informed, that Sir Francis Walſing-
" ham has been earneſt to recommend himſelf to
" his ſovereign, by practices both againſt my
" life, and that of my ſon; and the fabrication
" of papers, by which to effectuate my ruin, is
" a buſineſs not unworthy of his ambition. An
" evidence the moſt clear and inconteſtible is
" neceſſary to overthrow my integrity; but
" proofs the moſt feeble and ſuſpicious are held
" out againſt me. Let one letter be exhibited,
" written in my hand, or that bears my ſuper-
" ſcription, and I will inſtantly acknowledge,
" that the charge againſt me is ſufficiently ſup-
" ported. The declaration of my ſecretaries is
" the effect of rewards or of terror. They are
" ſtrangers; and to overcome their virtue was an
" eaſy atchievement to a Queen, whoſe power is
" abſolute, whoſe riches are immenſe, and whoſe
" miniſters are profound and daring in intrigues
" and treachery. I have often had occaſion to
" ſuſpect the integrity of Naw; and Curl, whoſe
" capacity is more limited, was always moſt ob-
" ſequious to him. They may have written many
" letters in my name, without my knowledge or
" participation; and it is not fit, that I ſhould
" bear the blame of their inconſiderate boldneſs.
" They may have put many things into diſ-
" patches which are prejudicial to Elizabeth;

* Mary could have no conception that Babington was duped by the policy of ſecretary Walſingham.

Book VIII. 1586. "and they may even have ſubſcribed their declaration to my prejudice, under the prepoſſeſſion, that the guilt which would utterly overwhelm them might be pardoned in me. I have never dictated any letter to them which can be made to correſpond with their teſtimony; and what, let me aſk, would become of the grandeur, the virtue, and the ſafety of princes, if they depended upon the writings and declarations of ſecretaries? Nor let it be forgotten, that by acting in hoſtility to the duty and allegiance which they ſolemnly ſwore to obſerve to me, they have utterly incapacitated themſelves from obtaining any credit. The violation of their oath of fidelity is an open perjury; and of ſuch men the proteſtations are nothing. But if they are yet in life, let them be brought before me. The matters they declare are ſo important as to require that they ſhould be examined in my preſence *. It argues not the fairneſs of the proceedings againſt me, that this formality is neglected. I am alſo without the aſſiſtance of an advocate; and that I might be defenceleſs and weak in the greateſt degree, I have been robbed of my papers and commentaries. As to the copies of the diſpatches which are ſaid to have been written by my direction to Mendoza, the lord Paget, Charles Paget, the archbiſhop of Glaſgow, and Sir Francis Ingle-

* It is obſervable, that by an act of the 1 th year of Elizabeth, it was ordained, "That no man is to be arraigned "for intending the deſtruction of the prince's life, but by the "teſtimony and oath of two lawful witneſſes, to be produced "face to face before him." Camden, p. 529. In the caſe of Mary, this law was violated; and the illegality of producing no witneſs againſt her was loudly cenſured by the ſubjects of Elizabeth. The declaration of Naw and Curl was treated with ſcorn; and men repeated with commendation, the ſaying of the Emperor Hadrian, *teſtibus non teſtimoniis credendum.*

"field,

" field, they are moſt unprofitable forgeries. For Book VIII.
" they tend only to ſhow that I was employed in 1586.
" encouraging my friends to invade England.
" Now, if I ſhould allow that theſe diſpatches
" were genuine, it could not be inferred from
" them, that I had conſpired the death of Eli-
" zabeth. I will even confeſs, that I have yielded
" to the ſtrong impulſes of nature; and that, like
" a human creature, encompaſſed with dangers,
" and inſulted with wrongs, I have exerted my-
" ſelf to recover my greatneſs and my liberty.
" The efforts I have made can excite no bluſhes
" in me; for the voice of mankind muſt applaud
" them. Religion in her ſterneſt moments of ſe-
" verity cannot look to them with reproach; and
" to conſider them as crimes, is to deſpiſe the
" ſanctimonious reverence of humanity, and to
" give way to the ſuſpicious wretchedneſs of
" deſpotiſm. I have ſought by every art of con-
" ceſſion and friendſhip, to engage my ſiſter to
" put a period to my ſufferings. Invited by her
" ſmiles, I ventured into her kingdom in the
" pride and gaiety of my youth; and under her
" anger and the miſeries of captivity, I have
" grown into age. During a calamitous confine-
" ment of twenty years, my youth, my health,
" my happineſs, are for ever gone. To her ten-
" derneſs and generoſity I have been indebted as
" little as to her juſtice; and oppreſſed and ago-
" nizing with unmerited afflictions and hard-
" ſhips, I ſcrupled not to beſeech the princes,
" my allies, to employ their armies to relieve me.
" Nor will I deny, that I have endeavoured to
" promote the advantage and intereſt of the per-
" ſecuted Catholics of England. My entreaties
" in their behalf, have been even offered with
" earneſtneſs to Queen Elizabeth herſelf. But
" the attainment of my kingdom, the recovery

" of

Book VIII. 1586. "of my liberty, and the advancement of that "religion which I love, could not induce me to "ſtain myſelf with the crimes that are objected "to me. I would diſdain to purchaſe a crown "by the aſſaſſination of the meaneſt of the hu- "man race. To accuſe me of ſcheming the "death of the Queen my ſiſter, is to brand me "with the infamy which I abhor moſt. It is my "nature to employ the devotions of Eſther, and "not the ſword of Judith. Elizabeth herſelf "will atteſt that I have often admoniſhed her "not to draw upon her head the reſentment of "my friends by the enormity of her cruelties to "me. My innocence cannot ſincerely be doubt- "ed; and it is known to the Almighty God, "that I could not poſſibly think to forego his "mercy, and to ruin my ſoul in order to compaſs "a tranſgreſſion ſo horrible as that of her mur- "der. But amidſt the inclement and unprinci- "pled pretences which my adverſaries are pleaſed "to invent to overwhelm me with calamities and "anguiſh, I can trace and diſcover with eaſe the "real cauſes of their hoſtility and provocation. "My crimes are my birth, the injuries I have "been compelled to endure, and my religion. I "am proud of the firſt; I can forgive the ſecond; "and the third is a ſource to me of ſuch comfort "and hope, that for its glory, I will be contented "that my blood ſhall flow upon the ſcaffold *."

Other particulars of the trial.

To the defence of Mary no returns were made beſide ſtout and unſupported affirmations of the truth of the evidence produced to her prejudice. In the courſe of the trial, however, there occurred ſome incidents which deſerve to be related. My lord Burleigh, who was willing to diſcompoſe her, charged her with a fixed reſolution

* Camden, p. 523. Johnſton, Hiſt. Rer. Britan. lib. iv.

of

of conveying her claims and titles to England, to the King of Spain. But, though in a diſcontented humour with her ſon, ſhe had threatened to diſinherit him, and had even correſponded on the ſubject with her ſelect friends, it appears that this project is to be conſidered as only a tranſient effect of reſentment and paſſion. She indeed acknowledged, that the Spaniard profeſſed to have pretenſions to the kingdom of England, and that a book in their juſtification had been communicated to her. She declared, however, that ſhe had incurred the diſpleaſure of many by diſapproving of this book; and that no conveyance of her titles to the Spaniard, had been ever executed. My lord Burleigh alſo reproached her with her knowledge of Morgan, who had engaged Parry to murder Elizabeth; and affirmed, that ſhe had beſtowed a yearly penſion upon him. It conſiſted not, ſhe told him, with her knowledge, nor did ſhe believe, that Morgan had inſpirited the conſpiracy of Parry *; and at any rate

* There is a confidential letter written by Mary to Caſtelnau, about the time of the diſcovery of Parry's conſpiracy, which has the following remarkable paſſage. "Vouz verrez "ce que j'eſcris à ladite Reine [Elizabeth] ma bonne ſoeur "touchant ces derniers accidens dont m'eſcriviez de Parray & "Morgan; où je ne ſçaurois prendre meillèur éclairciſſement "pour moy, ſi d'avanture aucun de mes ennemis y vouloit em- "brouiller mon nom, que de les prier, comme je fais tres in- "ſtamment, qu'ils recherchent autant qu'ils pourront le fonds "de tout cet affaire, & que s'ils m'y trouvent avoir part en "nulle ſorte & façon que ce ſoit, ils n'epargnent pas à me faire "du pis qu'ils pourront: mais à conditions auſſi; qu'ils s'en "abſtiennent, ſi je ne leur en donne occaſion. C'eſt à quoy "je m'arreſteray pour ce regard apres eu avoir eſcrit à la ditte "Reine ma bonne ſoeur la vie de laquelle je n'ay & n'auray "jamais moins chère que la mienne propre; quelque opinion "que ſiniſtrement où apparemment on pourroit concevoir du "contraire. Et pluſt à Dieu que de toutes parts on retranchaſt "tels ſi corrumpu & deteſtable miniſtres, comme j'ay entendu "qu'eſtoit le dit Parray; ne me pouvant perſuader que Morgan "ait jamais participé en ſi vilains deſſeins avec luy, au moins,

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ſhe obſerved, that ſhe was not anſwerable for actions in which ſhe had no concern. Her advice to Morgan, ſhe aſſured him, was to avoid all wicked and improper machinations; and as to the penſion ſhe had conferred upon him, he fully

" je vous puis aſſeurer que je ne l'ay jamais connu tel." Tuthbury, 24 Mar. 1585. To the ſame purpoſe there is a ſtrong paſſage in a letter from Mary to Elizabeth herſelf, which is preſerved in Murdin. See his Collection of State Papers, p. 569.

It is not unnatural to infer from the repeated and forcible manner in which Mary reprobates the conſpiracy of Parry, that ſhe could have no concern in the plot of Babington. Nor ought it to be forgotten that her deteſtation of ſuch horrid practices engaged her actually to ſubſcribe to the aſſociation for the ſecurity of the life of Elizabeth. This ſhe did in the following deed.

" The Queen of Scotts' bond in aſſociation to be an enemy " to all that ſhall attempt anie thing againſt her Majeſtie's lyffe, " 5 January, 1585-6.

" La Royne D'Eſcoſſe Douairuere de France ayant entendu " comme, pour obvier à tous attemptats contre la vye de la " Royne d'Angleterre, ſa bonne ſeur auroit eſte nagueres faict " entre aulcuns des principauls ſeigneurs de ce royaulme une " aſſociacion generale, deſirant en cela comme en toutes aultres " choſes donner toute preuve à la dicte Royne d'Angleterre ſa " bonne ſeur de ſa tres entiere affection & ſincerité vers elle, " & ſe tenant, comme ſa plus proche parente, obligée en de- " vuoir à ſa preſervation, ha de ſa bonne guere & franche vo- " lenté declare & promis ſuivant la dicte aſſociation declare et " promet en parole de Royne, & ſur ſa foy & honneur, quelle " repute de ſa preſent & tiendra à perpetuité pour ſes mortels " ennemis tous ceulx ſans nul excepter, qui par conſeil, pro- " curement, conſentement, ou aultre acte quelconque attempte- " ront ou executeront (ce que Dieu ne veuille) aulcune choſe " au prejudice de la vye de la dicte Royne ſa bonne ſeur, & " comme telles les pourſuivra par tous moyens juſques à extre- " mité, ſans jamais ceſſer quelle n'en aye faicte faire juſtice, " punition, & vengeance ſuffizantes & exemplaires. En teſ- " moing de quoy, & confirmation de la dict aſſociacion pour " eſtre notifie à tous ceulx qui appertiendra la dict Royne " d'Eſcoſſe ſa ſigne ce preſent acte de ſa mayne.

" MARIE, R."

" A Winkefield le Vme jour de " Janvire mil cinq cens quatre " vingt & cinque." See Murdin, p. 548.

deſerved

deſerved it; for ſhe was certain his attachment was ſincere and cordial; and he had loſt his all for her ſake. But, continued ſhe, your lordſhip will do well to reſtrain the peeviſhneſs of your paſſions, and to recollect the purpoſes which your miſtreſs had in view when ſhe conferred penſions upon the lord Gray and other miniſters of my ſon, who are determined and dangerous enemies both to him and me. During the trial, a paſſage being read from one of the letters in her ſuppoſed correſpondence with Babington, in which mention was made of the earl of Arundel and his brothers, ſhe burſt forth into tears. "Alas! exclaimed ſhe, how much has the illuſtrious "Houſe of Howard endured for me!" Never were diſtreſs and tears more noble and graceful. Walſingham, whom in her defence ſhe had treated with contempt, roſe up to defend himſelf. He called God to witneſs, that as a private gentleman he had never acted to her hurt; and that as a miniſter he had done nothing that was unbefitting or improper. He confeſſed, that out of his care for his miſtreſs, he had inquired with an anxious ſcrutiny into the plots againſt her. While he allowed, however, that he had practiſed with the conſpirators, he aſſerted that his arts and tampering were in no ſhape unworthy or criminal. Mary aſſured him, that what ſhe had ſaid was founded upon information; but that if he was indeed innocent of the baſeneſs of foul ſtratagems and deceit, it became him to believe, that ſhe had never conſented to the Queen's death. He preſumed not to reply. His proteſtation was deliberate and ſolemn; but it was not heard with approbation; and the age in which he lived did not believe its ſincerity *.

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The

* This ſtateſman was uniformly very vehement and paſſionate againſt the Queen of Scots. When he was ambaſſador in France,

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Sentence is pronounced againſt Mary.

The trial continued during the ſpace of two days; but the commiſſioners avoided to deliver their opinions. My lord Burleigh, in whoſe management Elizabeth chiefly confided, and whom the Scottiſh Queen diſcompoſed in no common degree by her ability and vigour, being eager to conclude the buſineſs, demanded to know, if ſhe had any thing to add to what ſhe had urged in her defence. She aroſe with an air in which innocence was blended with majeſty, and informed him, that ſhe would be infinitely pleaſed and gratified, if it ſhould be permitted to her to be heard in her juſtification before a full meeting of the parliament, or before the Queen and her privy council. This intimation was unexpected; and the requeſt implied in it was rejected. The court, in conſequence of previous inſtructions from Eli-

25 October. zabeth, adjourned to a farther day, and appointed that the place of its convention ſhould be the Star Chamber at Weſtminſter. It accordingly aſſembled there; and Naw and Curl, who had not been produced at Fotheringay Caſtle, were now called before the commiſſioners. An oath to declare the truth was put to them, and they definitively affirmed and proteſted, that the declaration they had ſubſcribed, was in every reſpect juſt and faithful. Nothing farther remained but to pronounce ſentence againſt Mary. The

France, his diſpatches were conſtantly filled with remonſtrances againſt what he termed the lenity of Elizabeth and her miniſters to this princeſs. He ſeemed happy to go out of his way to declaim againſt her. In writing to Elizabeth, he calls her "the boſom ſerpent;" and it was his reiterated counſel, that to eſtabliſh the tranquillity of England, it was abſolutely neceſſary to take away her life. Theſe circumſtances do not accord with his proteſtation, but are not to be doubted, ſince they reſt upon his own authority, in ſeaſons when his ſincerity cannot be ſuſpected. See his Diſpatches, ap. Dudley Digges, p. 267, 268. 271. 426, 427.

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commiſſioners unanimouſly concurred in delivering it as their verdict or judgment, "that ſhe "was a party to the conſpiracy of Babington; "and that ſhe had compaſſed and imagined mat- "ters within the realm of England, tending to "the hurt, death, and deſtruction of the royal "perſon of Elizabeth, in oppoſition to the ſta- "tute framed for her protection." Upon the ſame day in which this extraordinary ſentence was given, the commiſſioners and the judges of England iſſued a declaration which imported, that it was not to derogate in any degree from the titles and honour of the King of Scots *. Book VIII. 1586.

In this critical extremity of affairs, Elizabeth, to guard herſelf from reproach, and yet to haſten her deſigns againſt Mary, ſummoned a parliament to aſſemble at Weſtminſter. She artfully avoided to open it in perſon; and by her ſpecial commiſſion, its conſtitution was committed to the lord chancellor Bromley, the lord Burleigh, and the earl of Derby. The three Eſtates, convenient and complaiſant, admired the delicate ſenſibility which compelled her to refuſe being a witneſs to their deliberations upon the proceedings and ſentence againſt the Queen of Scots; and were thence inſpirited to be the more ſtrenuous in exhibiting their attachment to her. Without one diſſenting voice, they confirmed the trial of Mary, and the legality of her ſentence; and, not contented with this baſe violation of juſtice, they ſtill farther The Engliſh parliament confirms it. The duplicity of Elizabeth.

* Camden, p. 527.

It is worthy of obſervation, that no particulars of the trial of the Queen of Scots are known from the narrative of any of her friends who were preſent either at Fotheringay Caſtle or at the Star Chamber. The account of her trial depends upon the authority of the memorials of Thomas Wheeler and Edward Barker, who acted in it as regiſters or notaries for the Queen of England and her commiſſioners. See Camden, p. 525.

BOOK VIII 1586. flattered the ſanguinary diſpoſitions of their ſovereign, by preſenting to her, by the hands of the chancellor, a petition, in which they requeſted that the condemnation of the Scottiſh princeſs ſhould be proclaimed, and that ſhe ſhould be executed according to the laws. In this petition they declaimed againſt Mary in the bitter language of invective, and pretended to demonſtrate, that while ſhe lived, the moſt cruel dangers would threaten the death of Elizabeth, and the deſtruction of England. To ſpare her they conſidered as equivalent to an order to armed men to ſpill the blood of the Engliſh proteſtants; and they charged their miſtreſs to remember, that it became her to diſengage them from their oath of *aſſociation*, by conducting her moſt inveterate enemy to the block. Elizabeth, who had prepared them for this petition by her miniſters, received it with a ſecret exultation and triumph, and with loud expreſſions of the moſt lively concern and ſorrow. She gave thanks to the Almighty God, that he had miraculouſly preſerved her life from conſpiracies and plots; and ſhe proteſted with ſighs her ſurprize, that a perſon of her own quality and rank, and of the ſame race and ſtock, ſhould have been ſo wildly inflamed with hoſtility and paſſions, as repeatedly to ſcheme her ruin. Aſſuming a romantic generoſity and greatneſs of mind, ſhe obſerved, that if her life alone was expoſed to hazard by the exerciſe of lenity to Mary, ſhe would freely grant her a pardon. This kindneſs, however, ſhe failed not to recollect, would endanger the welfare of all her people. If England could acquire by her death a better prince, and could attain to greater felicity, ſhe aſſured her Eſtates, that ſhe would gladly lay down her life; and ſhe admoniſhed them, that it was chiefly for their ſake, that ſhe deſired to con-

tinue in a world, where her confidence and ſervices had been ſo often requited by treaſon and ingratitude. She expreſſed her ſincere belief that Mary was the contriver of the crimes which had been charged upon her; and ſcrupled not to aſſert, that the late ſtatute, inſtead of having been intended as a ſnare to her, was deſigned in reality as a warning and caution to deter her from improper attempts. The league of aſſociation for her ſecurity, and the act in conſequence of it, ſhe deſcribed as perpetual ties and obligations upon her to love and reſpect her ſubjects in the greateſt degree; but though ſhe could diſcern the wiſhes of her people in theſe tokens of their affection, and was fully convinced of the virtue and impartiality of her Eſtates, yet ſhe knew not what to determine about the ſentence pronounced againſt the Queen of Scots, and was diſpoſed to deliberate long before ſhe would ſettle herſelf in an unalterable reſolution. The three Eſtates were confirmed in the inclement courſe upon which they had entered by her artificial candour; and after twelve days of feigned deliberation, ſhe ſent the lord chancellor to the upper houſe, and ſerjeant Puckering to the commons, to make known to them her troubles, agitation, and grief; and to requeſt, that they would exert themſelves to diſcover ſome pleaſing expedient, in conſequence of which the life of Mary might be ſpared, and her own ſafety be effectually provided for and ſecured. The parliament did not diſappoint her hopes, and concurred in renewing their applications to her. They argued with redoubled violence, the propriety of executing Mary; and aſſured her, that after the moſt ſerious and painful debate and ſcrutiny, they deemed the expedient for which her humanity made her anxious, to be a matter that was impoſſible. For, that it was

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Book VIII. 1586. utterly vain to think, that Mary could repent of her crimes and acknowledge them; that her vigilance was moſt formidable, and might ſurmount the moſt faithful guards, and the ſtricteſt cuſtody; that bonds, oaths, and hoſtages, were ſecurities which ſhe could violate without any ſcruple; and that to permit her to retire out of England, was a favour which ſhe would immediately repay at the head of an army. They therefore conjured her to yield to their remonſtrances, and to gratify the whole body of her people by an act of juſtice, for which they applied unanimouſly, and with one voice. The reiterated importunities of her Eſtates, while they ſoothed her malignity, gave a ſanction to her purpoſes. She pleaſed herſelf in ſecret with the thought of loading her parliament with the guilt of her intended ſeverity to Mary. The dupe of her own inſincerity, ſhe fancied, that ſhe would eſcape altogether, or at leaſt mitigate in an uncommon degree, the cenſures and indignation of her own age, and of poſterity. Moved in appearance, by the force and ardour of the ſuggeſtions of her Eſtates, ſhe ſeemed to acquire a quick ſenſe of the ruin which hung over her realm, and over herſelf; and while ſhe founded affectedly the patriotiſm with which her heart was penetrated, ſhe acknowledged, that ſhe was not, indeed, ſo wildly indiſcreet, as to ſharpen a ſword, which her rival might carry to her boſom, or ſo egregiouſly careleſs, as not to feel for her ſafety. She did not, however, explain to them the exact line of the conduct which ſhe had reſolved to obſerve. By obtaining their ſtrenuous importunities to meaſures of outrage and violence, ſhe had accompliſhed the intention which had induced her to aſſemble them. Accordingly, after profeſſing her thankful eſteem of their affections,

tions, ſhe diſmiſſed them in anxiety, and under ſuſpence; allowing them to revolve in their minds the melancholy agitation of her paſſions, and the temporizing meanneſs of their own ſervility *. Book VIII. 1586.

James, ſurrounded by miniſters whom Elizabeth had bought, and in whom he confided, was a prey to tormenting anxieties. The reſentment of Mary, which he had provoked by the duplicity as well as the ſelfiſhneſs of his conduct, pierced him with inquietude. His refuſal to admit her to a participation of his crown, and to be conſidered as a Queen, and his ſtrict treaty with Elizabeth, though they flattered his paſſion for royalty, and advanced his intereſts, were ſources to him of an afflicting remorſe. The deepening diſtreſſes of her ſituation awakened all his filial fondneſs. Archibald Douglas, his ambaſſador at London, the maſter of Gray, ſecretary Maitland, and Sir Lewis Ballenden, united their influence to impoſe upon him, and ſo to regulate his conduct, that Elizabeth might have nothing to fear from his anger. They preſſed upon him the opinion, that his mother was actually a party to the conſpiracy of Babington. He believed that ſhe had committed the moſt cruel injuries againſt the Engliſh Queen; and he was ſatisfied, that ſhe ſhould be condemned to a perpetual impriſonment †. But the idea of her execution filled him with inexpreſſible horror; and all the inſinuations and arguments which could The anxieties and behaviour of the King of Scots.

* Romoaldus Scotus, Summarium Rationum, &c. ap. Jebb. vol. ii. p. 117. 153. Camden, p. 527, 528. Johnſton, Hiſt. Rer. Britan. lib. iv.

† "His opinion is, that it cannot ſtand with his honour, "that he be a conſentir to tak his mother's lyf, bot he is con- "tent how ſtrictly ſhe be keipit, and all her auld knaiſiſh far- "vantis heingit." The maſter of Gray to Mr. Arch. Douglas, Murdin, p. 569.

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Book VIII. 1586. be employed to procure his conſent to it were rejected with ſcorn. It was in vain that they told him, that her death would give him the full poſſeſſion of an undiſturbed kingdom; that it would turn to him, in their full tide, the affections of Elizabeth; that he might entertain the hopes of mounting the bed of the Engliſh Queen; that he might flatter himſelf with the advantage of obtaining a declaration to be her heir, by the Engliſh parliament; and that it was in agitation among her ſtateſmen to make him an offer of the Low Countries. His ſubjects entered into his paſſions; and could not brook the diſgraces and inſults which had been heaped upon Mary, with a prodigality ſo ſyſtematic, and ſo unfeeling. Her long and unexampled ſufferings, were ſtinging reproaches of their tameneſs; and while they conjectured the future from the paſt, they were ſeized with foreboding apprehenſions. James diſpatched repeated and urgent commands to Archibald Douglas, to admoniſh the Queen of England, that the execution of any violence upon the perſon of his mother, would expoſe her to his reſentment, and to that of his people. The returns of this envoy were inadequate and evaſive. The King ſuſpected the fidelity of the man whom he ought never to have truſted; and, burning with indignation, he hurried away Sir William Keith to Elizabeth, with a letter in his own hand, replete with the boldeſt reproaches, and menacing her with the terrors of vengeance and war. Elizabeth could not refuſe to admit this ambaſſador to an audience, and was infinitely diſconcerted with the high tone in which ſhe found herſelf addreſſed by the Scottiſh King. Burſting into rage, ſhe was about to chace Sir William Keith from her preſence, when the earl of Leiceſter and her privy counſellors interpoſing with their

their kind offices, entreated her not to judge too hardly of the paſſionate anxiety of a ſon in the cauſe of his mother. Upon recovering her temper ſhe aſſured Keith, that no precipitate meaſure ſhould be taken by her; and that ſhe would gladly receive any overture which his maſter could propoſe, that could ſave the life of Mary, and conſiſt with her own ſecurity and that of her kingdom. James, upon the departure of Keith, had aſſembled his Eſtates, and had detailed to them his complaints. They granted him a preſent ſupply, and gave him the promiſe of a more vigorous aid; and while they counſelled him to exert every effort to uphold his own honour, and the glory of their nation, they beſought him not to delay one moment in making himſelf ſtrong by alliances with France, Spain, and Denmark. The anſwer of Elizabeth to his diſpatch, ſerved however to mollify his paſſions; and in compliance with it, he appointed the maſter of Gray and Sir Robert Melvil to take the road for London, and to plead before Elizabeth for the life of Mary *.

6 December. Elizabeth commands the ſentence againſt Mary to be proclaimed. Meſſengers are ſent to her to inform her of it; and ſhe is treated with the indignities that are ſhown to criminals under condemnation.

Elizabeth, true to her reſentments, iſſued in the mean while a proclamation, in which ſhe announced to her kingdom, the ſentence of the commiſſioners againſt Mary; and in which ſhe neglected not to proteſt, that this meaſure was extorted from her to her infinite grief, by the earneſt prayers of the two houſes of parliament. The lord Buckhurſt and Beale, were choſen to carry to the Scottiſh princeſs, the ſad tidings of the fate which awaited her. When introduced into her preſence, they detailed with great plainneſs, the particulars of her ſentence, and ſignified to her, that the parliament had not only confirmed the verdict of the commiſſioners by their authority, but had ſolicited

* Spotſwood, p. 351. Murdin, p. 571. 573. Camden, p. 530.

Book VIII. licited its execution from motives of juſtice, ſe-
1586 curity, and neceſſity. They then enjoined her to acknowledge her offences againſt God and Elizabeth; beſought her to repent of them; and admoniſhed her, that while ſhe lived, the religion of England would be in danger. While they ſpoke, her countenance diſcovered an uncommon ſatisfaction and triumph. She gave thanks to God that ſhe was conſidered as an inſtrument for propagating the true religion; and ſhe deſired that ſhe might have a catholic prieſt to adminiſter the ſacraments to her. They told her that they had brought with them a biſhop and a dean, who would direct her conſcience, and afford the conſolations which were proper to her condition. Touched with their rudeneſs, ſhe exclaimed, that it was the faſhion of their country to kill their kings, and that the cruelty which ſhe had ſuffered, might be deſigned as a compliment to her for being deſcended from them. Sir Amias Paulet and Sir Drue Drury, refuſed now to treat her with any reverence or reſpect. They entered her apartment with their heads covered, and paid no obeiſance to her. They took down her canopy of ſtate, and deprived her of all the badges of royalty. By theſe inſulting mortifications they meant to inform her, that ſhe had ſunk from the dignity of a princeſs, to the abject ſtate of a criminal. She ſmiled to them with contempt, and ſaid, "In deſpite of your ſovereign and her ſubſervient judges, I will die a Queen. My royal character is indelible; and I will ſurrender it with my ſpirit to the Almighty God, from whom I received it, and to whom my honour and my innocence are fully known *."

In this melancholy ſtate of her fortunes, Mary, calm and intrepid, diſdaining to diſgrace herſelf

* Camden, p. 528.

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by any mean ſubmiſſions, or to prefer any humble ſolicitation for her life, addreſſed a magnanimous letter to Elizabeth. "I am happy, Madam, that I am arrived at the laſt ſtage of my long and lamentable pilgrimage. My fate, though altogether unmerited, I ſhall encounter with chearfulneſs. There are now a few circumſtances only which can attract my attention; and for theſe it is proper that I apply directly to yourſelf. From your miniſters and counſellors, who have perſecuted me with the moſt implacable hatred, I can expect no favour; nor would it become me to make petitions to them. In England, which has departed from the true religion, I cannot hope to be interred with the kings our progenitors according to the ceremonies of the catholic church. In Scotland the ſepulchres of my anceſtors have been profaned and violated. When my enemies, therefore, have glutted themſelves with my blood, I entreat that my remains may be carried by my domeſtics to France, where the bones of my mother are depoſited. There my body, which never knew any quiet while my ſoul was united to it, will reſt in peace. As my ſecond requeſt, I beg that I may not be abandoned to the ſecret tyranny of my adverſaries. They may conſume me with lingering torments, or what I dread more, they may ſully my fame with foul ſlanders. Let my execution be public, that there may be undoubted witneſſes, who may bear teſtimony to my firmneſs in my religion, and make an honeſt report of my dying agonies. It is my third requeſt, that my ſervants may depart out of your dominions without moleſtation; and that you will permit them to enjoy the legacies which I am to bequeath them in my teſtament.

She writes her laſt letter to Elizabeth. 19 Dec.

"Theſe

Book VIII. 1586. "Theſe favours I implore you to grant in the "name of Jeſus Chriſt, by our conſanguinity, "by the ſoul of Henry VII. our common pro- "genitor, by our royal dignity, and by the re- "ſpect which you bear to our ſex. It will pleaſe "me to receive an anſwer from you; nor accuſe "me of preſumption, that while I am leaving "this ſcene of things, I take the liberty to re- "mind you, that you are not to live for ever, "and that there is a tribunal, before which you "muſt appear, to render an account of your pro- "ceedings againſt me*." Elizabeth, aſhamed to addreſs a princeſs to whom her injuries were ſo atrocious, unwilling to grant ſome of her petitions, or ſullen with the malignity of guilt, paid no attention to this letter. Mary, amidſt her other inquietudes, was alarmed with the ſilence of Elizabeth, and felt not only the bitterneſs of ſuſpence, but the tormenting apprehenſion, that the laſt requeſts ſhe was ever to prefer to that princeſs would be treated with ſcorn. Forſaken by the world, ſhe ſought conſolation from her religion; and giving up every hope but in the mercy of her God, ſhe prepared herſelf for that change of exiſtence, which alone could protect her from inſults and ſorrow.

France interpoſes to ſave Mary.

The princes of Europe were ſtruck with amazement and horror at the imperious and tyrannical demeanour of Elizabeth. They abſtained, however, from exerting the generoſity and vigour which it became them to employ in the critical ſituation of the Scottiſh Queen. Henry III. indeed, had at different times inſtructed his ambaſſador L'Aubeſpine, to remonſtrate to the Engliſh court againſt the cruelties which were ſhown to Mary; but whatever this envoy could urge was ineffectual. He even diſpatched Pompone

* Jebb, vol. ii. p. 92. 395. Camden, p. 529.

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de Bellievre to Elizabeth, with a particular commiſſion, to intercede for the life of Mary. It is ſuſpected, notwithſtanding, that he was ſecretly pleaſed that her execution ſhould take place, as it would ſerve to humble the houſe of Guiſe, the ambition of which was hazardous and offenſive to him. But whatever truth may be in this ſuſpicion, it is certain, that Bellievre intereſted himſelf in her behalf with ability, and with the ſtrong appearances of the moſt cordial friendſhip. He aſſerted the independency of ſovereigns, and the abſurdity that one prince ſhould exerciſe authority over another. He maintained, that in reaſon, in precedence, and in juſtice, there exiſted not a pretence upon which Elizabeth could ſubject Mary to the ordinations of England. He recalled to her that this princeſs had come into her dominions for refuge, and that ſhe was intitled to her protection. The impriſonment of Mary he repreſented as a crime which no policy of ſtate could vindicate; and he maintained, that in her ſituation, every poſſible effort for her liberty, was proper and pardonable. He proteſted that the kings of Europe were concerned and intereſted in her fate, and that the execution of a free princeſs, was a blow which would wound all of them. He affirmed that the ſafety of Elizabeth would be more endangered by the death of Mary than by her life. He aſſured the Engliſh Queen, that if a reſolution was really taken by the catholic powers to invade her dominions, ſhe ought to impute it to a motive of religion, and not to the machinations of Mary. He cautioned her to obſerve, that if that princeſs were actually put to death, the cauſe of the hoſtility of theſe powers, ſo far from ceaſing, would acquire a new ſtrength. They would ſee in a ſtronger light than ever, the propriety of extirpating the proteſtant doctrines;

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doctrines, and would unite moſt ſeriouſly to revenge the execution of a Roman Catholic princeſs. He conjured her by every thing that is moſt ſacred among mankind, to treat Mary with moderation; pointed out the praiſe and the profits of clemency; and declared, that his maſter had commanded him to inform her, that if ſhe ſhould proceed to the laſt extremity againſt the Scottiſh Queen, he would conſult the vivacity of his reſentments, and make her know the full extent of his power. Elizabeth heard his harangue, was diſpleaſed with it, and did not attempt to give him any ſatisfaction *.

Elizabeth finally refuſes the applications of the King of Scots.

When the maſter of Gray and Sir Robert Melvil arrived in London to renew the applications of James for the life of Mary, little reſpect was ſhewn to them in their public capacity. In their firſt audience, to which they were accompanied by Mr. Archibald Douglas, Elizabeth exclaimed to them, that her inability to find any method by which to ſave the life of Mary and to aſſure her own, was a ſorrow to her that could not be meaſured. They were about to reply; but obſerving that her agitation was violent, they avoided to increaſe it by entering into the buſineſs of their embaſſy. In their ſecond audience, ſhe deſired them to deliver the propoſitions with which they were entruſted. They told her that their King would pledge his honour for the good behaviour of Mary; and that the chief nobles of Scotland would be hoſtages and ſureties, that ſhe ſhould engage in no plot or practice to her prejudice, or againſt the ſecurity of England. They told her, that he would alſo obtain from his mother, a full reſignation of all her titles and dignities. By theſe means, they ſaid, which would reduce the Scottiſh princeſs to a ſtate of utter in-

* Camden, p. 531.

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ſignificance, her life and the ſafety of England would be ſufficiently ſecured; and all poſſible danger to the proteſtant religion from a popiſh ſucceſſion, would be thus prevented, as James was known to be firm and ſtrenuous for the new opinions. Elizabeth heard theſe propoſals with attention. She ſpoke of them, however, as trifling and ineffacious, and rejected them with an air of ſcorn. Sir Robert Melvil obſerved to her, that ſhe was evidently under the impulſe of other motives than a fear of her life or of her kingdom; and that her zeal for the proteſtant intereſt was an affectation and a pretence. If ſhe ſhould proceed to execute the Queen of Scots, he admoniſhed her, that ſhe muſt encounter his ſovereign at the head of his people; and that ſhe would break and diſunite for ever the grandeur and intereſts of the two nations. His ſovereign, ſhe ſaid, was ungrateful; ſhe had watched over his crown from the moment of his birth; and if he ſhould violate the league between them, he muſt anſwer for the conſequences. She then flung from Melvil in an uneaſy ſtate of perturbation and anger. He haſtened after her, and beſought her not to act with precipitation, but to deliberate maturely upon the irreparable blow ſhe was meditating. His counſel, ſhe told him, his menaces, and his entreaties, were all inſolent and vain *.

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But while Sir Robert Melvil diſcharged his duty to his prince and his country, the maſter of Gray and Mr. Archibald Douglas, were traitors to both. In their public appearances they were cold in pleading for the life of Mary; and in

The treachery of his ambaſſadors.

* Melvil, Memoirs, p. 346. Spotſwood, p 352. See the Diſpatches of Sir Robert Melvil and the maſter of Gray, ap. State Papers, vol. A. p. 171. 173. 177, 178. 180, 181. 205. 222. See alſo vol. B. p. 312. 324. 327.

Book VIII. 1587. private they oppoſed themſelves to her with pertinacity and violence. The ſlaves and the penſioners of the Engliſh princeſs, they flattered and inflamed all her paſſions and prejudices. They ſtimulated her fears, by dwelling upon the ſpirit and addreſs of Mary, by magnifying her influence with the pope, the Spaniard, and the King of France, and by holding her out as the idol of the Engliſh Catholics. They ſpoke of the danger of delays, and entreated her not to put her glory to hazard, nor to expoſe her wiſdom to ſuſpicion, by an ill-judged mercy. They deſcribed the feeble and irreſolute character of James, and aſſured her, that he preferred hunting and books, to the turmoils of war. They ſaid, that his hope of ſucceſſion to the Engliſh crown was ſo ſtrong a bridle, that by its management ſhe would be able to maintain a conſtant aſcendancy over him. They pointed out her popularity with the proteſtants in Scotland, the weakneſs of Mary's faction, and the inveterate and incurable hatred which was borne to that princeſs by the Scottiſh eccleſiaſtics. They perpetually ſounded in her ear, that "a dead woman cannot bite." Elizabeth heard them with indecent tranſports of joy; and by their advice ſhe commanded the earl of Leiceſter and Sir Francis Walſingham to addreſs letters to James, and to ſecretary Maitland, intimating in the moſt artful and delicate terms, that the doom of Mary was irrevocably fixed, and that they might ſoon expect the melancholy intelligence of her death *.

The influence of the Scottiſh clergy.

James yielded to a painful and unavailing grief, and felt all the difficulties of the ſituation into which he was thrown by a princeſs who held his fortunes in her hand, and who could do him the greateſt good, or the greateſt evil. He announced

* Camden, p. 533. Spotſwood, p. 353.

the

the condition of Mary to his ſubjects, and ordered prayers to be ſaid for her in all the churches. The form of the petition he preſcribed, was framed with delicacy and caution, that the clergy might have no objection to it. He enjoined them to pray "that it might pleaſe God to enlighten "Mary with the light of his truth, and to pro-"tect her from the danger which was hanging "over her." His own chaplains, and Mr. David Lindſay, miniſter of Leith, obſerved his command. But all the other clergy refuſed to proſtitute their pulpits by preferring any petitions to the Almighty for a papiſt. James, ſhocked with their ſpirit of intolerance and ſedition, appointed a new day for prayers to be ſaid for Mary, and iſſued a ſtricter injunction to the clergy to obey him; and that he might be free himſelf from any inſult, he commanded the archbiſhop of St. Andrews to preach before him. The eccleſiaſtics, diſguſted with his injunction, perſuaded Mr. John Cowper, a probationer in divinity, to occupy the pulpit deſigned for the archbiſhop. When the King entered the church he teſtified his ſurprize, but told Cowper, that if he would obey his injunction, he might proceed to officiate. Cowper replied, "that he would do as "the Spirit of God would direct him." The King commanded him to retire, and the captain of his guard advanced to compel him to obedience. The enraged probationer exclaimed, that this violence "would witneſs againſt the "King in the great day of the Lord," and denounced a curſe againſt the ſpectators for not exerting themſelves in his defence. The archbiſhop now aſcending the pulpit, performed with propriety the function to which he had been called; and took the opportunity to recommend moderation and charity to the audience. In the after-

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noon Cowper was cited before the privy council, and was accompanied there by Mr. Walter Balcanqual and Mr. William Watſon, two miniſters remarkable for their zeal. As a puniſhment for his audacious petulance, he was committed to the caſtle of Blackneſs; and his attendants having diſtinguiſhed themſelves by an impudent vindication of him, were prohibited from preaching during the pleaſure of the King *.

The perplexities and artifice of Elizabeth.

Elizabeth, in the mean while, felt the torment and diſquiet of unhappy and miſerable paſſions. At times ſhe courted the ſadneſs of ſolitude, and refuſed to be conſoled or to ſpeak. In other ſeaſons her ſighs were frequent, and ſhe broke out into loud and wild exclamations expreſſive of the ſtate of her mind. Her ſubjects waited the determinations of her will under a diſtracting agitation and uncertainty. Her miniſters, who knew that it is the nature of fear to exclude pity, were induſtrious in inventing terrifying intelligence, and in circulating it through the kingdom. There were rumours that the Spaniſh fleet had arrived at Milford Haven; that a formidable army of Scottiſh combatants was advancing to the capital; that the duke of Guiſe had diſembarked many troops of veteran ſoldiers in Suſſex; that Mary had eſcaped out of priſon, and was collecting the Engliſh Catholics; that the northern counties had thrown aſide their allegiance; and that there was a new plot to kill Elizabeth, and to reduce London to aſhes. An actual conſpiracy was even maliciouſly charged upon L'Aubeſpine, the French reſident; and he was forced to withdraw from England in diſgrace. From the panic terrors which the miniſters of Elizabeth were ſo ſtudious to excite, they ſcrupled not loudly and

* Johnſton, Hiſt. Rer. Britan. lib. iv. Calderwood, p. 214. Spotſwood, p. 354.

inva-

invariably to infer, that the peace and tranquillity of the kingdom could alone be re-eſtabliſhed by the ſpeedy execution of the Scottiſh Queen *.

Elizabeth ſigns the warrant for the public execution of Mary.

While the nation was thus artfully prepared for the deſtruction of Mary, Elizabeth ordered ſecretary Davidſon to bring to her the warrant for her death. Having peruſed it with deliberation, ſhe obſerved, that it was extended in proper terms, and gave it the authority of her ſubſcription. She was in a humour ſomewhat gay, and demanded of him if he was not ſorry for what ſhe had done. He replied that it was afflicting to him to think of the ſtate of public affairs; but that he greatly preferred her life to that of the Scottiſh princeſs. She enjoined him to be ſecret, and deſired, that before he ſhould deliver the warrant to the chancellor, he ſhould carry it to Walſingham. "I fear much, ſaid ſhe, in a "merry tone, that the grief of it will kill "him †."

She is irreſolute, and recommends it to her miniſters that Mary ſhould be aſſaſſinated.

This levity was momentary; and fears and anxieties ſucceeded it. Though ſhe earneſtly deſired the death of Mary, ſhe was yet terrified to encounter its infamy. She was ſolicitous to accompliſh this baſe tranſaction by ſome method which would conceal her conſent to it. After intimating to Davidſon an anxious wiſh that its blame ſhould be removed from her, ſhe counſelled him to join with Walſingham in addreſſing a letter to Sir Amias Paulet and Sir Drue Drury, recommending it to them to manifeſt their love to her, by ſhedding privately the blood of her adverſary. The unlawfulneſs of this deed affected Davidſon, and he objected to it. She re-

* Camden, p. 533. Jebb, vol. ii. p. 608. † Davidſon's Apology, ap. Mackenzie, Lives of the Scottiſh Writers, vol. iii. p. 334.

Book VIII 1587. peated resolutely her injunctions; and he departed to execute them. A letter under his name and that of Walsingham, was dispatched to Mary's keepers, communicating to them her purpose *. Corrupted by her passions, and lost

* "A letter from Sir Francis Walsingham and Secretary "Davidson to Sir Amias Paulet.

"After our hearty commendations, we find by a speech "lately made by her Majesty, that she doth note in you both "a lack of that care and zeal for her service, that she looketh "for at your hands, in that you have not in all this time (of "yourselves without other provocation) found out some way "to shorten the life of the Scots Queen, considering the gre- "peril she is hourly subject to, so long as the said Queen shall "live; wherein besides a kind of lack of love towards her, "she wondereth greatly that you have not that care of your "own particular safeties, or rather the preservation of religion, "and the public good and prosperity of your countries, that "reason and policy commandeth; especially having so good a "warrant and ground for the satisfaction of your consciences "towards God, and the discharge of your credit and repu- "tation towards the world, as the oath of association which "you both have so solemnly taken and vowed; especially the "matter wherewith she standeth charged, being so clearly and "manifestly proved against her: And therefore she taketh it "most unkindly, that men professing that love towards her "that you do, should in a kind of sort, for lack of the dis- "charge of your duties, cast the burden upon her, knowing "as you do, her indisposition to shed blood; especially of one "of that sex and quality, and so near her in blood as the said "Queen is. These respects we find do greatly trouble her "Majesty; who, we assure you, hath sundry times protested, "that if the regard of the danger of her good subjects and "faithful servants, did not more move her than her own peril, "she would never be drawn to assent to the shedding of her "blood. We thought it meet to acquaint you with these "speeches lately passed from her Majesty, reserving the same "to your good judgments: And we commit you to the pro- "tection of the Almighty.

"Your assured friends,

London,
February 11, 1586.

"Fras. Walsinghame,
"Will. Davidson."

See Mackenzie, Lives of the Scottish Writers, vol. iii, p. 342.

to

to the ſenſibilities of virtue, Elizabeth had now reached the laſt extremity of human wickedneſs. Though a ſovereign princeſs, and entruſted with the cares of a great nation, ſhe bluſhed not to give it in charge to her miniſters to enjoin a murder; and this murder was connected with every circumſtance that could make it moſt frightful and horrid. The victim for whoſe blood ſhe thirſted, was a woman, a queen, a relation, who was ſplendid with beauty, eminent in abilities, magnanimous under misfortunes, and ſmiling with innocence. Sir Amias Paulet and Sir Drue Drury, though the ſlaves of religious prejudices, felt an elevation of mind which reflected the greateſt diſgrace upon their ſovereign. They conſidered themſelves as groſsly inſulted by the purpoſe propoſed to them; and in the return * they

* "A letter to Sir Francis Walſingham from Sir Amias Paulet.

"Sir,

"Your letters of yeſterday coming to my hands this preſent "day at five in the afternoon, I would not fail according to "your direction, to return my anſwer with all poſſible ſpeed; "which I ſhall deliver unto you with great grief and bitter- "neſs of mind, in that I am ſo unhappy, as living to ſee this "unhappy day, in which I am required by direction from my "moſt gracious ſovereign, to do an act, which God and the "law forbiddeth; my goods and living and life are at her "Majeſty's diſpoſition, and I am ready to loſe them the next "morrow, if it ſhall pleaſe her, acknowledging that I do hold "them as of her meer and moſt gracious favour, and do not "deſign to enjoy them, but with her Highneſs good-liking; "but God forbid I ſhould make ſo foul a ſhipwreck of my "conſcience, or leave ſo great a blot to my poor poſterity, "and ſhed blood without law or warrant, truſting, that her "Majeſty of her accuſtomed clemency, and the rather by your "good mediation, will take this my anſwer in good part, as "proceeding from one who never will be inferior to any chriſ- "tian ſubject, living in honour, love, and obedience towards

 "his

Book VIII. 1587. they made to Walſingham, they aſſured him that the Queen might command their lives and their property, but that they would never conſent to part with their honour, and to ſtain themſelves and their poſterity with the guilt of an aſſaſſination. When Davidſon carried their diſpatch to her, ſhe broke out into anger. Their ſcrupulous delicacy, ſhe ſaid, was a dainty infringement of their oath of aſſociation; and they were nice, preciſe, and perjured traitors, who could give great promiſes in words and atchieve nothing. She told him that the buſineſs could be performed without them, and recommended one Wingfield to his notice, who would not heſitate to ſtrike the blow. The aſtoniſhed ſecretary exclaimed with warmth againſt a mode of proceeding ſo dangerous and unwarrantable. He proteſted that if ſhe ſhould take upon herſelf the blame of this deed, it would pollute her with the blackeſt diſhonour; and that if ſhe ſhould diſavow it, ſhe would overthrow for ever the reputation, the eſtates, and the children of the perſons who ſhould aſſiſt in it. She heard him with pain, and withdrew from him with precipitation *.

" his ſovereign; and thus I commit you to the mercy of the " Almighty.

" Your moſt aſſured poor friend,

" From Fotheringay, the
" 2d of February, 1586. " A. Powlet."

" P. S. Your letters coming in the plural number, ſeem to " be meant to Sir Drue Drury as to myſelf; and yet becauſe " he is not named in them, neither the letter directed unto " him; he forbeareth to make any particular anſwer, but ſub- " ſcribeth in heart to my opinion.

" D. Drury."

See Mackenzie, Lives of the Scottiſh Writers, vol. iii. p. 341.

* Davidſon's Apology, ap. Mackenzie, p. 335.

The

The warrant, after having been communicated to Walſingham, was carried to the chancellor, who put the great ſeal to it. This formality was hardly concluded, when a meſſage from Elizabeth prohibited Davidſon from waiting upon the chancellor till he ſhould receive farther inſtructions. Within an hour after he received a ſecond meſſage to the ſame purpoſe. He haſtened to court; and Elizabeth aſked eagerly if he had ſeen the chancellor. He anſwered in the affirmative; and ſhe exclaimed with bitterneſs againſt his haſte. He ſaid that he had acted exactly as ſhe had directed him. She continued to expreſs warmly her diſpleaſure; but gave no command to ſtop the operation of the warrant. In a ſtate of uneaſineſs and apprehenſion, he communicated her behaviour to the chancellor and the privy council. Theſe courtiers, however, who were well acquainted with the arts of their miſtreſs, and who knew how to flatter her, paid no attention to him. They perceived, or were ſecretly informed, that ſhe deſired to have a pretence upon which to complain of the ſecretary, and to deny that he had obeyed her inſtructions. They obſerved to him, that by ſubſcribing the warrant, ſhe had performed whatever the law required of her; and that it was not proper to delay the execution any longer. While they were anxious to pleaſe Elizabeth, they were conſcious of their own cruelty to Mary, and did not imagine they could be in perfect ſecurity while ſhe lived. They diſpatched the warrant to the earls of Shrewſbury and Kent, with inſtructions to them to fulfil its purpoſe *.

The warrant paſſes the Great Seal.

When the two earls and their retinue reached Fotheringay Caſtle, they found that Mary was

* Spotſwood, p. 355. Davidſon's Apology, ap. Mackenzie, p. 336.

ſick,

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The execution of the Queen of Scots.

7 February.

ſick, and repoſing upon her bed. They inſiſted, notwithſtanding, to be introduced to her. Being informed by her ſervants that the meſſage they brought was important and preſſing, ſhe prepared to receive them. They were conducted into her preſence by Sir Amias Paulet, and Sir Drue Drury; and with little formality, they told her that Elizabeth had conſented to her death, and that ſhe was to ſuffer the next morning at eight o'clock. Then Beale, one of the clerks of the privy council, who accompanied them, read over the warrant. She croſſed herſelf in the name of God, and with an unſhaken courage, and an unaltered countenance, ſaid to them, "The news "you bring cannot but be moſt welcome, ſince "they announce the termination of my miſeries. "Nor do I account that ſoul to be deſerving of "the felicities of immortality, which can ſhrink "under the ſufferings of the body, or ſcruple "the ſtroke that ſets it free." They affected to juſtify their miſtreſs, by entering into details concerning the conſpiracy of Babington. She put her hand upon the Scriptures, which lay upon a table near her, and ſwore in the moſt ſolemn manner, that ſhe never deviſed, conſented to, or purſued the death of Elizabeth in any ſhape whatſoever. The earl of Kent, unwiſely zealous for the proteſtant religion, excepted againſt her oath, as being made upon a popiſh Bible. She replied to him mildly, "It is for this very rea-"ſon, my lord, to be relied upon with the "greater ſecurity; for I eſteem the popiſh ver-"ſion of the Scriptures to be the moſt authen-"tic." Indulging his puritanical fervour, he declaimed againſt popery, counſelled her to renounce its errors, and recommended to her attention Dr. Fletcher, dean of Peterborough. She heard him with ſome impatience, and diſcovered

no

no anxiety to be converted by this eccleſiaſtic, whom he repreſented as a moſt learned divine. Riſing into paſſion, he exclaimed that "her life "would be the death of their religion, and that "her death would be its life." After informing him that ſhe was unalterably fixed in her religious ſentiments, ſhe deſired that her confeſſor might have the liberty to repair to her. The two earls concurred in obſerving, that their conſciences did not allow them to grant this requeſt. She intimated to them the favours for which ſhe had applied by her letter to Elizabeth, and expreſſed a wiſh to know if her ſiſter had attended to them. They anſwered, that theſe were points upon which they had received no inſtructions. She made enquiries concerning her ſecretaries, Naw and Curl; and aſked whether it had ever been heard of in the wickedeſt times of the moſt unprincipled nation, that the ſervants of a ſovereign princeſs had been ſuborned for the purpoſe of deſtroying her. They looked to one another, and were ſilent. Bourgoin, her phyſician, who with other domeſtics was preſent at this interview, ſeeing the two earls ready to depart, beſought them with an emphatic earneſtneſs to reflect upon the ſhort and inadequate portion of time that they had allotted to his miſtreſs to prepare herſelf for death. He inſiſted that a reſpect for her high rank, and the multiplicity and importance of her concerns, required at leaſt a period of ſome days. They pretended, however, not to underſtand the propriety of his petition, and refuſed it *.

Upon the departure of the two earls, her domeſtics gave a full vent to their afflictions; and while ſhe experienced a melancholy pleaſure in

* La Mort de la Royne D'Eſcoſſe, ap. Jebb. p. 612, 613, 622, 623. Camden, p. 534.

their

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their tears, lamentations, and kindneſs, ſhe endeavoured to conſole them. Their grief, ſhe ſaid, was altogether unavailing, and could neither better her condition, nor their own. Her cauſe had every thing about it that was moſt honourable, and the miſeries from which ſhe was to be relieved, were the moſt hopeleſs, and the moſt afflicting. Inſtead of dejection and ſadneſs, ſhe therefore enjoined them to be contented and happy. That ſhe might have the more leiſure to ſettle her affairs, ſhe ſupped early; and, according to her uſual cuſtom, ſhe eat little. While at table, ſhe remarked to Bourgoin, her phyſician, that the force of truth was inſurmountable; for that the earl of Kent, notwithſtanding the pretence of her having conſpired againſt Elizabeth, had plainly informed her, that her death would be the ſecurity of their religion. When ſupper was over, ſhe ordered all her ſervants to appear before her, and drank to them. They pledged her upon their knees, mingling tears with the wine, and entreating her forgiveneſs for any offences they had ever committed againſt her. She condeſcended, in her turn, to beg their pardon for her omiſſions or neglects; and ſhe recommended it them to love charity, to avoid the unhappy paſſions of hatred and malice, and to preſerve themſelves ſtedfaſt in the faith of Chriſt. She now conſidered the inventory of her goods and jewels, and put down the names of the domeſtics to whom ſhe deſtined them. To her confeſſor ſhe ſent a letter, entreating the favour of his benediction and prayers. With her own hand ſhe wrote out her teſtament, ſettling her affairs with great prudence. To the King of France and the duke of Guiſe, ſhe addreſſed ſeparate diſpatches, in which ſhe recalled to them her misfortunes, aſſerted her innocence, and pointed out

out her ſervants as proper objects of their generoſity. Her ſon ſhe alſo mentioned to them, recommending him to their anxious cares, if he ſhould prove worthy of their eſteem; but delicately intimating a fear, that the courſe of his conduct might diſpleaſe them. Having finiſhed theſe attentions, ſhe entered her bed chamber with her women; and according to her uniform practice, employed herſelf in religious duties, and in reading in the Lives of the Saints. At her accuſtomed time, ſhe went to ſleep; and after enjoying ſome hours of ſound reſt, ſhe awaked. She then indulged in pious meditation, and partook of the ſacrament by the means of a conſecrated hoſte, which a melancholy preſentiment of her calamities had induced her to obtain from Pius V *. Book VIII. 1587.

At the break of day ſhe arrayed herſelf in rich but becoming apparel; and calling together her ſervants, ſhe ordered her will to be read, and apologized for the ſmallneſs of her legacies, from her inability to be more generous. Following the arrangement ſhe had previouſly made, ſhe then dealt out to them her goods, wardrobe, and jewels. To Bourgoin, her phyſician, ſhe committed the care of her will, with a charge that he would deliver it to her principal executor the duke of Guiſe. She alſo entruſted him with tokens of her affection for the King of France, the Queen mother, and her relations of the Houſe of Lorraine. Bidding now an adieu to all worldly concerns, ſhe retired to her oratory, where ſhe was ſeen ſometimes kneeling at the altar, and ſometimes ſtanding motionleſs, with her hands joined, and her eyes directed to the heavens. In theſe tender and agitated moments ſhe was dwell-

* Camden, p. 535. La Mort de la Royne D'Eſcoſſe, p. 625, 627, 628, 631.

Book VIII. 1587. ing upon the memory of her ſufferings and her virtues, repoſing her weakneſſes in the boſom of her God, and lifting and ſolacing her ſpirit in the contemplation of his perfections and his mercy. While ſhe was thus engaged, Thomas Andrews, the high ſheriff of the county, announced to her, that the hour for her execution was arrived. She came forth beaming benignity and peace. Her gown was of black ſilk; her petticoat was bordered with crimſon velvet; a veil of lawn, bowed out with wire, and edged with bonelace, was faſtened to her cawle, and hung down to the ground; an Agnus Dei was ſuſpended from her neck by a pomander chain; her beads were fixed to her girdle; and ſhe bore in her hand, a crucifix of ivory. Amidſt the ſcreams and lamentations of her women, ſhe deſcended the ſtairs; and in the porch ſhe was received by the earls of Kent and Shrewſbury, with their attendants. Here too, ſhe met Sir Andrew Melvil, the maſter of her houſehold, whom her keepers had debarred from her preſence during many days. Throwing himſelf at her feet, and weeping aloud, he deplored his ſad deſtiny, and the ſorrowful tidings he was to carry into Scotland. "Lament "not, ſaid ſhe, honeſt Melvil, but rather exult "that thou ſhalt ſee Mary Stuart delivered from "all her woes. The world, my good ſervant, "is but vanity; and an ocean of tears would "not ſuffice to bewail its ſorrows. Hitherto I "have found thee faithful; and though thou be "in religion a proteſtant, and I am a catholic, "yet ſeeing there is but one Chriſt, I charge "thee as thou reſpecteſt him, to bear this laſt "meſſage from me, that I die unſhaken in my "religion, and unchanged in my affections to "Scotland and France. Tell my ſon to ſerve "God, to conſult the true intereſts of his peo-

"ple,

"ple, and never to entruſt himſelf to the power "of another prince. Aſſure him, that I have "never executed any deed prejudicial to his "kingdom, his crown, or his greatneſs; and "admoniſh him to maintain an amity with Eli-"zabeth." She added, "O God! thou who "art truth itſelf! and who readeſt the moſt ſe-"cret thoughts of mortals! thou knoweſt, that "I was ever moſt anxiouſly deſirous of the "cordial union of the kingdoms of England "and Scotland. Infinite are the injuries which "my adverſaries have done me. They have "thirſted for my blood, like the hart that pant-"eth for the brook. O God of mercy, forgive "them." When ſhe named her ſon, her eyes were flooded with tears which ſhe could not repreſs; and ſhe ſeemed to ſtruggle with a ſorrow, that ſhe cared not to reveal *.

After ſhe had ſpoken to Melvil, ſhe beſought the two earls that her ſervants might be treated with civility, that they might enjoy the preſents ſhe had beſtowed upon them, and that they might receive a ſafe conduct to depart out of the dominions of Elizabeth. Theſe ſlight favours were readily granted to her. She then begged, that they might be permitted to attend her to the ſcaffold, in order that they might be witneſſes of her behaviour at her death. To this requeſt the earl of Kent diſcovered a ſtrong reluctance. He ſaid that they would behave with an intemperate paſſion, and that they would practiſe ſuperſtitious formalities, and dip their handkerchiefs in her blood. She replied, that ſhe was ſure that none of their actions would be blameable; and that it was but decent that ſome of her women ſhould

* Spotſwood, p. 356. La Mort de la Royne D'Eſcoſſe, p. 634. Narratio, Supplicii mortis Mariæ Stuart, ap. Jebb, vol. ii. p. 163, 164.

Book VIII. 1587. be about her. The earl ſtill heſitating, ſhe was affected with the inſolent and ſtupid indignity of his malice, and exclaimed, "I am couſin to your "miſtreſs, and deſcended from Henry VII. I "am a dowager of France, and the anointed "Queen of Scotland." The earl of Shrewſbury interpoſing, it was agreed, that ſhe ſhould ſelect two of her women, who might aſſiſt her in her laſt moments, and a few of her men ſervants, who might behold her demeanour, and report it *.

She entered the hall where ſhe was to ſuffer, and advanced with an air of grace and majeſty to the ſcaffold, which was built at its fartheſt extremity. The ſpectators were numerous. Her magnanimous carriage; her beauty, of which the luſtre was yet dazzling, and her matchleſs misfortunes, affected them. They gave way to contending emotions of awe, admiration, and pity. She aſcended the ſcaffold with a firm ſtep and a ſerene aſpect, and turned her eye to the block, the axe, and the executioners. The ſpectators were diſſolved in tears. A chair was placed for her, in which ſhe ſeated herſelf. Silence was commanded; and Beale read aloud the warrant for her death. She heard it attentively, yet with a manner from which it might be gathered, that her thoughts were employed upon a ſubject more important. Dr. Fletcher, dean of Peterborough, taking his ſtation oppoſite to her without the rails of the ſcaffold, began a diſcourſe upon her life paſt, preſent, and to come. He affected to enumerate her treſpaſſes againſt Elizabeth, and to deſcribe the love and tenderneſs which that princeſs had ſhewn to her. He counſelled her to repent of her crimes; and while he inveighed

* Camden, p. 535. La Mort de la Royne D'Eſcoſſe, p. 635.

againſt

againſt her attachment to popery, he threatened her with everlaſting fire, if ſhe ſhould delay to renounce its errors. His behaviour was indecent and coarſe in the greateſt degree; and while he meant to inſult her, he inſulted ſtill more the religion which he profeſſed, and the ſovereign whom he flattered. Twice ſhe interrupted him with great gentleneſs. But he pertinaciouſly continued his exhortations. Raiſing her voice, ſhe commanded him with a reſolute tone to withhold his indignities and menaces, and not to trouble her any more about her faith. "I was born, ſaid "ſhe, in the Roman Catholic religion; I have "experienced its comforts during my life, in the "trying ſeaſons of ſickneſs, calamity, and ſor-"row; and I am reſolved to die in it." The two earls aſhamed of the ſavage obſtinacy of his deportment, admoniſhed him to deſiſt from his ſpeeches, and to content himſelf with praying for her converſion. He entered upon a long prayer; and Mary falling upon her knees, and diſregarding him altogether, employed herſelf in devotions from the office of the Virgin. She aroſe; and after waiting till the dean had concluded his prayer, ſhe again kneeled, and in an audible voice expreſſed her unlimited forgiveneſs of all her enemies, recommended the church, her ſon, and Queen Elizabeth, to the protection of God, and implored the Saints to intercede with him in her behalf. Carrying now her crucifix to her lips, ſhe preſſed it devoutly to them, and then looking upon it eagerly, ſhe exclaimed, "O Chriſt! thou wert extended on the croſs to "ſave mankind when they were loſt. Pardon my "tranſgreſſions, and ſtretch out thy arms to re-"ceive me in mercy." The earl of Kent, offended with her reverence for the crucifix, deſired her to have Chriſt in her heart and not in

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Book VIII. 1587. her hand. She mildly anſwered, that ſhe held his image in her hand that her imagination might be impreſſed with the livelier ſenſibility of his paſſion, and that her heart might be touched and penetrated with the greater compunction and gratitude *.

Her women now aſſiſted her to diſrobe; and the executioners offering their aid, ſhe repreſſed their forwardneſs, by obſerving that ſhe was not accuſtomed to be attended by ſuch ſervants, nor to be undreſſed before ſo large an aſſembly. Her upper garments being laid aſide, ſhe drew upon her arms a pair of ſilk gloves. Her women and men ſervants burſt out into loud lamentations. She put her finger to her mouth to admoniſh them to be ſilent, and then bad them a final adieu with a ſmile that ſeemed to conſole, but that plunged them into deeper woe. She kneeled reſolutely before the block, and ſaid, "In thee, O Lord! "do I truſt, let me never be confounded." She covered her eyes with a linen handkerchief in which the Euchariſt had been encloſed; and ſtretching forth her body with great tranquillity, and fitting her neck for the fatal ſtroke, ſhe called out, "Into thy hands, O God! I commit my "ſpirit." The executioner with deſign, from unſkilfulneſs, or from inquietude, ſtruck three blows before he ſeparated her head from her body. He held it up mangled with wounds, and ſtreaming with blood; and her hair being diſcompoſed, was diſcovered to be already gray with afflictions and anxieties. The dean of Peterborough alone cried out, "So let the enemies "of Elizabeth periſh." The earl of Kent alone, in a low voice anſwered "Amen." All the other

* Spotſwood, p. 356. Narrat. Sup. & Mort. Mariæ Stuart, p. 164.

ſpectators

ſpectators were melted down with the tendereſt ſympathy and ſorrow *. Book VIII. 1587.

Her women haſtened to protect her dead body from the curioſity of the ſpectators, and ſolaced themſelves with the thoughts of mourning over it undiſturbed when they ſhould retire, and of laying it out in its funeral garb. But the two earls prohibited them from diſcharging theſe melancholy yet pleaſing offices to their departed miſtreſs, and chaſed them from the hall with indignity. Bourgoin her phyſician applied to them, that he might be permitted to take out her heart for the purpoſe of preſerving it, and of carrying it with him to France. But they refuſed his entreaty with diſdain and anger. Her remains were touched by the rude hands of the executioners, who carried them into an adjoining apartment; and who tearing a cloth from an old billiard table, covered that form, once ſo beautiful. The block, the cuſhion, the ſcaffold, and the garments which were ſtained with her blood, were conſumed with fire. Her body, after being embalmed and committed to a leaden coffin, was buried with a royal ſplendour and pomp in the cathedral of Peterborough. Elizabeth who had treated her like a criminal while ſhe lived, ſeemed to be diſpoſed to acknowledge her for a Queen when ſhe was dead. Twenty years after, James commanded her bones to be removed to Weſtminſter, and to be depoſited in their proper place among the Kings of England †.

Such was the melancholy fate of Mary Stuart, Queen of Scots, in the forty-fifth year of her age. Her abilities were an honour to her birth, The character of Mary.

* State Papers, vol. A. p. 192. 230. Camden, p. 535. Jebb. vol. ii. p. 308.

† Spotſwood, p. 357. La Mort de la Royne D'Eſcoſſe, p. 641. 653.

Book VIII. 1587. which was moſt illuſtrious. Her virtues were great; her misfortunes greater. While ſhe was capable of profound views, and a bold policy, ſhe was firm and ſtrenuous. Her underſtanding was clear, her judgment penetrating, her ſpirit lofty, her application vigorous. But ſhe was called to the exerciſe of royalty, in an unhappy and moſt critical period. The troubles of the Reformation had confirmed the turbulence of her nobles; and ſhe had been accuſtomed to the orderly government, and the refined and ſeducing manners of France. The zeal of her people for the new opinions was moſt paſſionate; and ſhe was attached to the antient religion with a keenneſs that excited their fears. Her prime miniſters, though able and popular, were deſtitute of integrity and patriotiſm; and a conſpiracy to diſturb her peace, and to accompliſh her ruin, was formed early by an imperious rival, who, to exorbitant power and immenſe wealth, added the ſingular felicity of being directed by ſtateſmen devoted to her purpoſes, and poſſeſſed of the greateſt talents. With the happieſt intentions, with public ſpirit and the love of juſtice, with moderation, liberality and ſplendour, ſhe attained not the praiſe of true glory. Circumvented by the treachery of ſmiling and corrupted counſellors, and expoſed to the unceaſing hatred and ſuſpicions of turbulent eccleſiaſtics, ſhe perpetually experienced the miſeries of diſappointment, and the malignity of detractions. With great capacity for buſineſs, ſhe was unſucceſsful in affairs. Infinitely amiable in her private deportment, ſhe enjoyed not tranquillity and happineſs. She was candid and open; engaging and generous. Her manners were gentle, her temper chearful, her converſation eaſy and flowing, her wit polite, her information various, her taſte elegant,

gant. But her huſbands, like her courtiers, were eager to interrupt her proſperity and enjoyments; and while her adminiſtration was deformed with diſaſters and faction, her domeſtic life was embittered with diſquietudes and ſorrow. With every claim to felicity, ſhe was expoſed to all the croſſes of fortune; and her form, which gave a ſplendour to her rank, her abilities, her virtues, and her accompliſhments, ſerved to ennoble her afflictions. The incomparable beauty and expreſſion of her countenance, the exquiſite propriety of her ſtature, and the exact ſymmetry of her ſhapes, attracted and fixed the admiration of every beholder. In her air, her walk, her geſture, ſhe mingled majeſty and grace. Her eyes, which were of a dark grey, ſpoke the ſituations and ſenſibility of her mind; the ſound of her voice was melodious and affecting; and her hair, which was black, improved the brightneſs of her complexion. To give the greateſt luſtre to her perſon, ſhe took a full advantage of the adventitious aids and garniture of dreſs. She diſcovered an inexhauſtible fancy in the richneſs and variety of her garments. She delighted in jewels and precious ſtones; and ſhe was anxiouſly curious in the fineneſs and faſhion of her linen. But while her mind and her perſon were ſo perfect and ſo alluring, ſhe was not exempted from frailties. Though capable of diſſimulation, and acquainted with the arts of management and addreſs, ſhe did not ſufficiently accommodate herſelf to the manners of her people. Her reſpect for her religion was too fond and doating to conſiſt with the policy and the dignity of a great ſovereign. In her counſellors ſhe uniformly repoſed too unbounded a confidence; and from the ſoftneſs of her nature, ſhe could be ſeduced to give them her truſt even after their demeanour was equivo-

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cal

Book VIII. 1587. cal and ſuſpicious. Her clemency was not guided by prudence, and was generally repaid with ingratitude and inſult. To the proteſtant clergy, whoſe inſolence was inordinate and ſeditious, ſhe conducted herſelf ſometimes with a paſſion that was unbecoming, and ſometimes with a remiſſneſs that detracted from her conſequence. A determined contempt or a vigorous ſeverity would have ſuited better with her royal condition. She received her impreſſions with too much vivacity; and from the delicacy of her organization ſhe was diſpoſed to that ſpirit of caprice which is in ſome meaſure characteriſtic of her ſex; but which, though often pleaſant and even delightful in the ſtill and endearing intercourſe of private life, betrays in public concerns the ſuſpicion of inconſtancy and indiſcretion. Her faults, however, were the reſult of amiable weakneſſes; and they excite regret rather than indignation. The moſt unpardonable error of her life was the romantic imprudence with which ſhe ventured into England, and entruſted herſelf to the power of Elizabeth. By courage and perſeverance ſhe might have defeated the turbulence and ambition of her nobles; and experience and time would have opened up to her all the arts of government. But by this fatal ſtep ſhe involved herſelf in difficulties which ſhe was never able to ſurmount. Elizabeth, to whom her abilities and beauty were a ſource of the moſt unrelenting jealouſy and anger, embraced, with a ferocious ardour, the opportunity of humbling her completely as a Queen, and as a woman. She was expoſed to all the practices of a cunning and a wicked vengeance. The vileſt calumnies, the moſt inſulting mortifications, the moſt ſtudied barbarities, were employed againſt her. She was made to exchange a kingdom for a priſon; and while

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while ſhe felt in her own perſon the cruelеſt injuries, ſhe was afflicted with the dangers that threatened her country and her ſon. An inclement and ſuſpicious adverſary, who dreaded to encounter her when at liberty, tarniſhed the glory of an illuſtrious reign by trampling upon her ſceptre while ſhe was a captive. The rivalſhip of beauty ſtill more perhaps than of talents, foſtered the reſentments of Elizabeth; and while ſhe made Mary to ſuffer under her power, ſhe found the moſt exquiſite delight in overturning the dominion of her charms. It pleaſed her in the greateſt degree, that the beauty of the Scottiſh princeſs ſhould waſte itſelf in ſolitude, that ſhe ſhould be kept at a diſtance from admiration and homage, and that ſhe ſhould never experience, in any fortunate alliance, the melting tenderneſs, and the delicate ſenſibilities of connubial love *. During the long period which paſſed from the flight of Mary into England till her death, her miſeries were intenſe, piercing, and uninterrupted. The bitter cup of her fortune, which often overflowed, never ceaſed to be full. But, though agonizing with conſtant afflictions, and though crowned with thorns, ſhe ſtill remembered that ſhe was a Queen, and maintained the elevation and the dignity which became her. To overwhelm her with diſtreſs and anguiſh, Elizabeth ſcrupled not to inſult and to

* "Elle n'eſtoit veue de perſonne, non pas meſme des ſoldats, qui la gardoient, ſinon bien rarement, & quand il "plaiſoit à ſon gardien la laiſſer aller prendre l'air autour de "la maiſon, entre des bois & dedans un parc enfermé. & retiré "de tout grand chemin. Ou meſme ſi de fortune il paſſoit "quelqu, un eſtoit chaſſé loing, & empeſché d'approacher, de "peur qu'il ne la viſt, ou que contemplant ſa face, en euſt "bonne opinion, ou rapportaſt quelque louange de ſa beaute, "de laquelle ceſte vaine Elizabeth eſtoit eſtrangement jalouſe." La Mort de la Royne D'Eſcoſſe, p 643.

Book VIII. 1587. violate the moſt eſtabliſhed principles of law and juſtice, the honour of hoſpitality, the reverence of her ſex, the holineſs of religion, the ſolemnity of engagements, the ties of relation, the feelings of humanity, the ſanctity of innocence, and the majeſty of Kings. But no inſolence of tyranny, no refinement of anger, and no pang of woe, could conquer or deſtroy her greatneſs and her fortitude. Her mind, which grew in its powers under ſtruggles and calamity, ſeemed even to take a ſtrain of vigour from the atrocious paſſions of her rival; and during her lamentable captivity, and in her dying ſcene, ſhe diſplayed a magnanimity and a heroiſm that perhaps may have been equalled, but which has never been ſurpaſſed in any age, or in any nation.

THE END

APPENDIX I.

OBSERVATIONS CONCERNING THE PUBLIC LAW, AND THE CONSTITUTIONAL HISTORY OF SCOTLAND; WITH OCCASIONAL REMARKS CONCERNING ENGLISH ANTIQUITY.

INTRODUCTION.

DURING the middle times, the laws and cuſtoms of Scotland are imperfectly underſtood; and, on this account, the ſyſtem of its juriſprudence is involved in uncertainty, and without that ſtability of principles which ought to diſtinguiſh it. When we know our public law, and our conſtitution, in their firſt rudeneſs, and in their progreſſive conditions of refinement, we ſhall be able to diſpel this uncertainty, and to arrive at ſimplicity and ſcience.

To contribute to a purpoſe ſo valuable, is the intention of this work; and while I endeavour to excite curioſity, I am ſtudious to gratify it. But the enterprize to which I point, will require the foſtering cares, and the patient efforts, of many a laborious ſcholar. An infinite multitude of materials and records muſt be collected, and a thouſand painful reſearches muſt be made, before our juriſprudence is to ripen to perfection. The mine abounds in riches; but they are hid in the ground, and muſt be ſought for with ingenuity and toil.

Though the labyrinth deceives with its windings, though dangers threaten on every ſide, it is not fit that we ſhould loſe our courage. It ought not to be any longer a reproach to the Scottiſh nation, that they are yet, in a great meaſure, to explore the principles and antiquities of their legiſlation and government. While I take the liberty, therefore, to propoſe theſe important branches of inquiry to our lawyers, and men of letters, I cannot but urge even the difficulties which attend them, as incitements to activity and pride. They are exactly in that ſtate of imperfection and ne-

gleſt, where the moſt ample ſcope is afforded for the exertion of abilities, and for diſcovery. To go to ſubjects which human wit has exhauſted, is to court an inferior merit. It is to ſolace in an elegant idleneſs. It is to give up the praiſe of invention for tricks of rhetoric, and trappings of language.

Concerning the obſervations which I now ſubmit to the public, it does not become me to offer an opinion. My execution may be extremely defective; but I have a title to ſay, that my intentions were what they ought to have been. I felt the affections and the ardour of a good citizen. If my general principles are right, their application will be allowed to be extenſive; and my book, of conſequence, muſt have a value. If I have fallen into errors, I ſhall be proud to forſake them. For my view is to inveſtigate the truth, and to illuſtrate a portion of knowledge the moſt difficult. I affect not popularity and declamation. What I have written is to the few, and not to the many. And to my topics, though they are of high import, no powers of mind can communicate the charm of uniform elegance, or the regular warmth of animated compoſition. It has been my wiſh, that my expreſſion ſhould be plain, without being negligent; and, contented with perſpicuity, I did not ſeek for ornament.

OBSERVATIONS

CONCERNING THE

PUBLIC LAW,

AND THE

CONSTITUTIONAL HISTORY

OF

SCOTLAND.

BOOK I.

CHAPTER I.

The general Importance of the Feudal Law. Its peculiar Obſcurity in Scotland. The Notion that it was adopted by different Nations from a Principle of Imitation. Its uniform and diſtant Source. The Æra of its Introduction into Scotland. Common Opinions on this Subject. An Argument for the high Antiquity of Fiefs.

THE Beneficiary, or the Feudal Law, is an object of great dignity in every country of Europe. It operated powerfully both on government and manners; and, without a due comprehenſion of this ſubject, we ſhould attempt in vain to form an adequate judgment of antient times. Men of genius and learning have, of conſequence, made inquiries concerning inſtitutions which, while they lead to ſuch general utility, are of themſelves ſufficiently ſingular to invite an anxious reſearch and curioſity. Yet, it will be allowed, that the ſyſtem of fiefs, notwithſtanding all which has been done in relation to it, is very far from being clear or obvious. It contains a ſtore of antiquities, infinitely intricate, and almoſt inexhauſtible.

In Scotland, the hiſtory of this law is ſtill more obſcure than in any other nation. To this imperfection,

the melancholy condition of our records has contributed in an efficacious manner. But, I think, it is chiefly to be aſcribed to our want of antiquaries of ability. For the progreſſion of fiefs muſt have been nearly the ſame in all the kingdoms of Europe. No Selden, no Spelman has ariſen, to caſt a light upon the gloom which conceals our laws, government, and cuſtoms; and our hiſtorians have copied one another with a convenient and diſgraceful ſervility.

An idea has prevailed, that one nation of Europe adopted the feudal inſtitutions from another; and the ſimilarities of fiefs in all the ſtates where they were eſtabliſhed, has given an air of plauſibility to this opinion. It is contradicted, however, by the principles of natural reaſon, and by the nature of the feudal uſages; and, if I am not miſtaken, it receives no real ſanction from records or hiſtory.

In the peculiarity of the manners, and of the ſituation of the barbarians who over-ran Europe, we muſt look for the ſource of the beneficiary or the feudal conſtitutions. We meet with them uniformly, wherever this peculiarity prevailed. They did not flouriſh by adoption; they did not ſpread by imitation. They were prior to the æra when ſtates attend to the uſages of one another, and improve by obſervations from abroad. They were not the effect of a plan, or the creation of a projector. They unfolded themſelves under the influence of human paſſions and human conduct, in a certain condition of ſociety. Wherever they ſtruck root, they roſe up to a ſimilar height, and in reſembling proportions. In every country of Europe they kept a correſpondence in their growth, maturity, and decline. Their principles, genius, and hiſtory, wherever we may go to obſerve them, have a general and ſtriking uniformity. And the variations which are to be ſeen in minute particulars, on a penetrating ſurvey, are to be explained from the events, the accident, and the policy which diverſify nations.

The portrait, which ſuits the barbarians who made ſettlements in the other countries of Europe, will apply to the warriours who founded the kingdom of Scotland. They were diſtinguiſhed by a paſſion for war, a love of independence, and a contempt of all the arts of peace. They were pleaſed with addreſs, activity, and valour. Men of merit were ſurrounded with followers. With theſe they upheld their importance, and ſet barriers to

deſpotiſm

deſpotiſm. The prince was reſpected, and was reſpectful in his turn.

A military ſovereign, limited in his power, officers, who added to his greatneſs, while they ſupported their own, and ſoldiers who were conſcious of freedom, and diſpoſed to maintain it, were to regulate the territory they had acquired. No record, no code goes back to this remote period. But, as the ſame cauſes will ſtill be attended with the ſame conſequences, the diviſions which were made of the landed property, muſt have exhibited a reſemblance to thoſe which took effect among the other adventurers of Celtic and Gothic origin, who fixed themſelves in their conqueſts.

The ſovereign, as repreſenting the public, gave out territory to the chiefs who were to guard his throne; and the chiefs beſtowed poſſeſſions on their followers, who were to advance with them to battle. The ranks of the community had been united in a previous ſubordination. The ſuper-addition of the tie of land, gave a ſtability to this union, and was immediately productive of ſuperiority and vaſſalage.

But, while poſſeſſions were to flow in the range of feudality, and were to uphold a regular militia, there were alſo eſtates, which were to be received, and to be retained under more enlarged maxims. To theſe, every perſon who was free had a title. He could lay claim to his lot or partition of territory, and could diſpoſe of it at his pleaſure. In contradiſtinction to the feudal grant, which was burthened with ſervice, and confined by limitation, theſe lands were known by the name of *allodiality*; a term which denoted their entire freedom, and exemption from ſuperiority *.

Theſe great diviſions characteriſed the property of land in every country of Europe. In Scotland, they were coeval with the monarchy. And they muſt have ſprung from the ſame peculiarity of manners, and of ſituation, which had given them exiſtence in other nations †.

It has been conceived, indeed, that Malcolm II. building upon ſome foreign model, introduced theſe cuſtoms into Scotland; and the great body of the Scottiſh hiſtorians and lawyers have ſubſcribed to this notion. It has likewiſe been thought, that they were imported

* Spelman, Gloſſ. voc. Alode.

† View of Society in Europe in its progreſs from rudeneſs to refinement, book I. chap. 2.

into this country expreſsly from England; and the policy of Malcolm III. has been highly extolled, as the effective cauſe of their eſtabliſhment†. But it ſeems to me, that no reaſons of any authority ſupport theſe opinions [A].

They bear either expreſsly, or by implication, that the feudal ſyſtem was introduced into Scotland, in conſequence of a principle of adoption or imitation. Now, the peculiarities of fiefs are ſo ſtrong, and ſo contradictory to all the common maxims which govern men, that they could not poſſibly be carried, in any ſtage of their progreſſion, from one people to another. To tranſplant the feudal uſages, when the grants of land were precarious, or at the will of the prince, to a country where ſuperiority and vaſſalage had been unknown; to alter the orders of men, from the ſovereign to the peaſant; and to produce the correſponding chain of cuſtoms, with reſpect to legiſlation, and the details of the higher and the lower juriſdiction, muſt have been an attempt infinitely wild, and altogether impracticable. To tranſplant fiefs in their condition of perpetuity, muſt have been a project, involving an equal, or rather a greater number of abſurdities.

But, while it is to be imagined, that fiefs could not be tranſported with ſucceſs, in any period of their progreſſion, from one people to another; it is alſo obvious, that a nation ſo cultivated, as to have the knowledge and the practice of them in any degree, could not be inclined to make a conqueſt for the purpoſe of a ſettlement. The exiſtence of fiefs implies an eſtabliſhment and a fixed reſidence; and hiſtory has no notice of any tribe or people under this deſcription, who ever wandered from home to fight for a tract of country which they might inhabit.

Wherever feudality was to flouriſh, it was to grow from the root. The tree could not be carried to a foreign ſoil. Its native earth could alone preſerve it in exiſtence, and give the aliment that was to make it riſe into height, and ſhoot into branches.

Scotland was a feudal kingdom; and we can point pretty exactly to the time when fiefs were *hereditary* there. Now, in that form, they could not be imported by any of its princes; and, it is evident, that no conquering nation, advanced to the practice of fiefs in this

† Eſſays upon ſeveral ſubjects concerning Britiſh antiquities, Eſſ. 1.

[A] Book II. Chap. I.

degree,

degree, made a conqueſt and eſtabliſhment in Scotland. In conſequence, thereof, of a *natural* progreſs, fiefs muſt have grown to this condition of refinement. And, before fiefs were hereditary, they were for a ſeries of years; before they were for a ſeries of years, they were for life; and, before they were for life, they had been precarious or at pleaſure *.

In every feudal country, the progreſs from the precarious grant, to the gift in perpetuity, was experienced. In Scotland, the ſame progreſs muſt have been known; and the conſideration of it carries us back to a remote antiquity. For fiefs, in this kingdom, being *hereditary* about the days of Malcolm II. or Malcolm III. ſome centuries muſt have paſſed away in the production of the previous ſteps of feudality.

It was not, in fact, till the year 877, that, in France, the progreſs of fiefs to perpetuity was finiſhed †. In England, hereditary fiefs were known before the time of Edward the Confeſſor, who began to reign in the year 1041. In Scotland, eſtates hereditary, or in perpetuity, are mentioned to have been familiar in the age of Malcolm II. who was crowned King in the year 1004; and a certainty of their exiſtence is evinced in the reign of Malcolm III. who ſwayed the Scottiſh ſceptre from the year 1057 to the year 1093 ‡.

Theſe things, ſo natural, ſo conſiſtent, and ſo uniform, appear to me to have an authority that is not to be controverted; and, I think, I am juſtified to infer from them the high antiquity of fiefs in the Scottiſh nation.

* Lib. Feud. 1, tit. 1. Craig, Jus Feudale, lib. I. dieg. 4.

† View of ſociety in Europe in its progreſs from rudeneſs to refinement, book II. ch. 2.

‡ Chron. Saxon. ap. Praefat. Epiſc. Derrenſis ad LL. Anglo-Saxon, p. 6, 7.

CHAPTER

CHAPTER II.

The Feudal Army. The National Militia. Their Variations and Hiſtory.

SECTION I.

The Growth of the Feudal Grant. The Military Service of the Vaſſal, while Fiefs were in their Progreſs. Knight-ſervice. Its Duties. The Æra of its Eſtabliſhment. The Conditions of Liberty and Servitude. Allodiality. A Diſtinction on this Subject. The Military Schemes. Ordinances for the Advancement of Arms.

THE avidity of man to accumulate property, his real wants, his artificial deſires, his love of pleaſure, his ambition, his care to perpetuate his name, and to enrich his poſterity; the generoſity of his nature, and its ſeiſiſhneſs; all joined to advance the precarious fief to be hereditary. And, when the fief was hereditary, or perpetual, the feudal ſyſtem was in its ſtate of completion.

From the grant at pleaſure, to the gift in perpetuity, ſome centuries are included: and, during this long period, the feudal vaſſal was bound, by a *general* obligation, to military ſervice. In the infancy of the union of the lord and the vaſſal, a general obligation only was ſufficient. The ſervice of the vaſſal, when demanded, was given with ſincere pleaſure, and entire cordiality. The bent of rude times was towards war, and there was an abſence of all commercial objects. The vaſſal reſorted to the hall of his ſuperior, took a concern in his ambition, and mixed in his amuſements and ſports. An affectionate intercourſe, and a reciprocation of good offices, ſeemed to mark out the feudal aſſociation as a confederacy which could not be impaired, and which was deſtined to flouriſh.

But, as the uſes of wealth were unfolded, the feudal grant was to become a ſubject of diſquiet. In all the progreſs to hereditary fiefs, property was to riſe in its advantages

advantages and ſecurity. It called the attention of the vaſſal from his lord to himſelf; and, amidſt mercenary purſuits and occupations, the cordiality which had diſtinguiſhed them of old, was to decay. Thus the military ſervice, which had been briſk and vigorous in its early operations, came to languiſh with time, and the altering ſtate of the feudal aſſociation. This change, or fluctuation, was experienced in Scotland, as well as in every other feudal kingdom; and here, too, the ſame remedy, or expedient, was applied to recover the militia of fiefs.

The military duty, which had been a general obligation only upon the vaſſal, was made *particular*. This invention was called *Knight-ſervice*. The vaſſal, by this tenure, was bound to be in the field for forty days, with a known attendance of ſoldiers or knights. The number of theſe was in proportion to the extent of his fief. Rolls were kept of the military tenants, and of the exact ſervices they were bound to perform. And, in this manner, the prince was inſtructed in the proper ſtrength of his kingdom *.

Knight-ſervice was eſtabliſhed in Scotland before the time of Malcolm IV. †. Records of his reign inſtruct its exiſtence, and do not mention it as a novelty [B]. It was a meaſure fancied with addreſs; and it communicated to the feudal militia all the utility of which it was capable.

But, while the vaſſals of the crown, with their followers or knights, were to fight for the kingdom, we muſt not imagine that they were its only defenders. In every feudal ſtate, the great conditions of ſociety were liberty and ſervitude. To be free, was to have a title to go to the war, and to ſeek renown. To be a ſlave, was to be doomed to toil in the houſe, to ſweat in the field, and to know neither eaſe nor glory. While the ſubordinations of men, in the arrangements of feudality, were the peculiar guardians of the kingdom, there was yet, in every perſon who was free, an inherent obligation to defend it againſt uncommon and urgent dangers. The neceſſities of the ſtate gave the alarm to all the ranks of the citizens; and the brave made haſte to repel the enemy, and to ſpill their blood. There were thus the militia of fiefs, and the militia of the nation.

* View of ſociety in Europe in its progreſs from rudeneſs to refinement, book 2.

† He began to reign an. 1153. [B] Book II. Chap. II.

Of

Of the free, it was a characteriſtic, that they might poſſeſs property; and, while the train of the vaſſalage filled up the feudal army, the militia of the nation was neceſſarily to conſiſt of the proprietors of *allodiality*. But though, in general, an allodial poſſeſſion is to be applied to a property in land, it was likewiſe to denote an eſtate in moveables, or in money; and proprietors of the latter claſs, as well as thoſe of the former were, in the ſeaſons of peril, to bear arms, and to range themſelves in battle [C.]

Theſe military ſchemes communicated to the Scottiſh monarchs a command, which included the fulleſt ſtrength of the kingdom. Upon ordinary occaſions, they marched with the military tenants; and, when the nation was preſſed to extremity, they might embody, without diſtinction, all their ſubjects who were capable of bearing arms.

That theſe ends might be purſued and anſwered, every feudal, and every allodial proprietor, was ordained to provide himſelf with armour in proportion to his eſtate. Muſters of men, from the age of ſixteen to ſixty, were made. It was remarked by the feudal captains, and by commiſſioners appointed by the crown, that every individual had the arms which were ſuited to his wealth and to his ſtation *.

When the ſovereign iſſued his mandate to aſſemble the troops, all perſons of whatever rank, were to preſent themſelves in the army. The loſs of his fief, or a fine in proportion to his quality, was the puniſhment of the diſobedient vaſſal †: And it is to be conceived, that the allodial proprietor, or the ſoldier who was arrayed in the ſtrength of his county, was alſo ſubjected to a penalty when he delayed or refuſed to advance to the royal ſtandard.

The militia of the nation, as well as the militia of fiefs, ſerved upon their own charge; and wherever the troops were to paſs, it was a law, that proviſions ſhould be afforded to them at the prices which were uſual. The magiſtracy of towns, and the bailiffs of villages, were to attend to their bargains and tranſactions with the people. On their march, they were diſcharged from committing any diſorder or waſte, and from all prac-

[C] Book III. Chap. III.

* Stat. Wilhelmi, cap. 23. Prima Stat. Rob. I. cap. 27.

† Stat. Alexandri, cap. 15.

tices

tices of fraud. And it was a rule, that the country ſhould aſſiſt the ſoldiery, and that the ſoldiery ſhould abſtain from doing any injury to the country.

When the war was not diſtant, men of rank went to the camp, with the equipage and garniture of their table. When the ſcene of action was remote, they were to carry along with them the ſums of money which were to ſupply their neceſſities, and to operate to their grandeur *.

This was the military power of Scotland, when it maintained the ſtruggle for independence againſt Edward I.; when it recovered its liberties which had ſunk under the ſtrength and the craft of this conqueror; when it chaſtiſed the vain temerity and reſtleſſneſs of Edward II.; and, when it contended anew for its freedom againſt the policy, the talents, and the valour of Edward III.

The riſing ambition of Princes, and the ſuperior force exerted in their contentions, were rendering war a greater object of attention. James I. a prince of the moſt ſhining talents, knew how to diſtinguiſh himſelf, and enacted many laws for the advancement of arms. It was one of his regulations, that all men, from the age of twelve years, ſhould employ themſelves to excel in archery. Bow-marks, or butts, were erected in convenient places in every pariſh; and thoſe who neglected to exerciſe themſelves in ſhooting at them were to be fined by his ſheriff, or by the lord of the territory †. He gave encouragement to merchants to import the weapons of war into his kingdom; and he commanded regular exhibitions to be made by the ſoldiery of their arms ‡. The proprietor, who had land of the extent or valuation of twenty pounds, or who poſſeſſed one hundred pounds of moveables, was to have a horſe, and to be armed at all points. The proprietor who enjoyed a ten pound land, or fifty pounds in goods, was to have a hat, a gorget, gloves of plate, and defences of ſteel, for other parts of his body. Burgeſſes and proprietors who had twenty pounds in moveables, were to have a habergeon, or a doublet of defence, an iron hat; a bow, a caſe § of

* Stat. 1. Rob. I. cap. 5. † Statutes Jam. I. parl. 1424, cap. 18.

‡ Parl. 1424, cap. 44. parl. 1425, cap. 47. Theſe exhibitions were called *weaponſchawinges*. In France, this ceremony was *monſtre d'armes, armorum oſtenſio*; *Du Cange, voc. Arma. Monſtram.* In England, it was termed the *arraying* of the troops, or the marſhalling of them in military order.

§ It contained twenty-four arrows; *Skene, voc. Schaffa ſagittarum.*

arrows,

arrows, a ſword, a buckler, and a knife. Men of inferior degree were to be armed to the beſt advantage, at the diſcretion of the ſheriff. And thoſe who had no bows, were to have a battle-ax, a target, a ſword, and a durk ‖.

The barons and knights who had great eſtates, and who had obtained the King's licenſe, might exceed in warlike accompaniments, and adorn themſelves with ſilk and fur. But, in general, it was ordained, that all ſoldiers, of whatever ſtation, ſhould avoid gaudineſs and ornament, and array themſelves in plain garments *.

Theſe practices of diſcipline, and uſages of war, were continued and improved under James II. under James III. under James IV. and under James V †. But the knowledge of powder and fire-arms being extended over Scotland in the reign of the laſt of theſe princes, the art of war was to change its operations. Hand-guns, culverings, and artillery of different kinds, came into faſhion; and, with theſe, the officers and ſoldiery were to provide themſelves, according to their ſtations, and the meaſure of their wealth. The barons and lords inſtructed their vaſſals in the uſe of them; and captains choſen in every pariſh, by its magiſtrates, and the king's commiſſioners exerciſed the national militia ‡. [D].

In the reign of Queen Mary, the intercourſe with France ſerved to improve the Scottiſh nation in the knowledge and the practice of fire-arms. But James VI. who hated war, made no improvement of the military art. He conſtituted, however, a guard for his perſon, which was to conſiſt of forty men, who, beſide having goodly fortunes of their own, were each to be allowed two hundred pounds yearly for their entertainment and parade. They were to ſerve on horſeback, and to be in a conſtant attendance §.

The engines of war approaching to perfection in France, Germany, and England, correſponded with the advancement of the arts. Scotland catched by communication the advantages of other ſtates. The diſ-

‖ Parl. 1425, cap. 60. parl. 1429, cap. 120, 121, 122, 123.

* James I. parl. 1429, cap. 119.

† James II. parl. 1456, cap. 56. 64. James III. parl. 1471, cap. 45. Parl. 1481, cap. 18. Parl. 1483, cap. 90. James IV. parl. 1491 cap. 31. Parl. 1503, cap. 75. James V. parl. 1540, cap. 85, 86, 87, 88, 89, 90.

‡ James V. parl. 1540, cap. 91. 94.

[D] Book II. Chap. IV.

§ James VI. parl. 1584, cap. 137.

aſtrous

aſtrous times of Charles I. agitating all the moſt violent paſſions, and all the bittereſt animoſities of men, foſtered the military virtues, and made known that dependence of officers, that ſubordination of troops, and thoſe forms of the military art, which ſtill, in ſome meaſure, characteriſe the armies of Europe.

To Charles II. the eſtates of the Scottiſh parliament made an offer of twenty thouſand foot, and two thouſand horſe, to be raiſed out of the different ſhires of the kingdom *. On the foundation of this grant, Charles, with the approbation of parliament, was to new-model the military power of Scotland. The enliſtment of men was in the places and counties where they were uſually to ſerve. Fit allowances were given to the foot and horſe, in the times of rendezvous, and a care was beſtowed to exerciſe them. In this conſtitutional militia, which was to act, and to be diſbanded, according to events and circumſtances, the nation was to confide, as in a bulwark; and it was to march at the command of the prince, to oppoſe every invaſion from abroad, and to ſuppreſs all domeſtic inſurrections †.

This eſtabliſhment was meant as an effectual improvement of the former military ſchemes. And, from the reign of Charles II. till the union of the two kingdoms, it was the rule for raiſing thoſe levies of horſe and foot, which were rendered neceſſary by the exigencies of a preſent emergence ‡. But, notwithſtanding this military ſettlement, the ſovereign had ſtill the privilege to call out in arms, on momentous occaſions, every man in the kingdom, from the age of ſixteen to ſixty §.

* Car. II. parl. 1663, cap. 26.

† Car. II. parl. 1669, cap. 2.

‡ Acts of the eſtates of Scotland, an. 1689, cap. 20. 23. 24. Stat. Will. and Mary, parl. 1683, cap. 7. Will. parl. 1695, cap. 33. parl. 1696. cap. 23.

§ Car. II. parl. 1663, cap. 26.

SECTION

SECTION II.

The Decline of the Military Power. Cauſes of its Weakneſs. Remedies for its Recovery. The People maintain the Military Character, amidſt the Decay of the Military Arrangements. An Attempt to introduce a Standing Army. The Military Eſtabliſhments of Scotland go to Ruin. Its preſent Condition, as to Arms. Its Claim to a Militia.

THE military power created by fiefs, and the national militia, conſtituted a ſtrength which had acquired great glory over Europe. In Scotland, the renown of the former was as conſiderable as in any other kingdom. And here, too, it bore within its boſom thoſe ſeeds of decline, which it carried every where beſide; and its defects, and the inherent weakneſs of every militia, ought to have produced the advantage of a ſtanding army, which, when guarded by proper reſtraints, will be allowed to be an inſtrument, the moſt effectual, both for protection and for conqueſt.

Knight-ſervice, the tenure of feudality, which was invented to give ſtability to the military power of fiefs, could not operate to that end with a conſtant effort. Commercial ideas were altering the ſentiments and the manners of men. The duties of feudal obedience were to ſhock the dignity of barons who were opulent and powerful; and the ſeduction of their example was to infuſe a turbulent ſpirit into the lower orders of the vaſſalage. Jealouſies without number were to diſtract the ſuperior and his tenants. The claims of wardſhip and relief, of marriage, aid, and eſcheat, were to riſe into oppreſſions. The action of the feudal ſyſtem, when times were mercenary, and property the chief object of care, promoted diviſions and ſelfiſhneſs; and, though this natural principle of diſunion had not prevailed, yet order and diſcipline could not be vigorous among troops, who were diſbanded on the termination of an incurſion or a battle.

The diviſion of the *fee* into parts; the commutation of ſervice for money, or for eluſory preſtations, for the preſenting of a pair of ſpurs, or the blowing of a horn, at ſtated times, and on particular occaſions; and the power of the vaſſal to act in the army by a deputy, were all circumſtances which were about to be experienced; and

and of which, it was alſo the tendency to wound deeply the feudal aſſociation, and its military duties*. And theſe met with ſtabs ſtill more ſevere in the deſires of the proprietor to diſpoſe of his eſtate, and in the invention of the powers of ſale and alienation; in the wiſhes of the creditor to procure what belonged to him; and in the invention of the privilege of diſtreſſing or attaching the property of the debtor, and of forcing it into commerce §.

It was in vain that princes attempted to uphold the feudal militia. Encouragements were given to arms; but their influence was only partial, and for a ſeaſon. By a law framed with wiſdom, and often renewed, the ſovereign, when his vaſſal died in the field, or received a mortal wound, was to remit to the heir the expenſive incidents of ward, relief, and marriage; and the nobility were to extend this advantage to the heirs of their tenants in a ſimilar ſituation. With a like intention, it was ordained, that, when the unlanded ſoldier periſhed in the hoſt, or was wounded to death, his wife and children ſhould enjoy his leaſes and poſſeſſions for five years without any fine of entry or compenſation to the proprietor. And when a churchman was ſlain in battle, or died of a ſickneſs contracted in the camp, it was enacted, that his neareſt relation of moſt approved ability, ſhould be preſented and collated to his benefice †.

But what laws could not do, was in ſome reſpect effected by the weakneſs of the country, and the rivalſhip it was proud to maintain with England. This peculiarity of condition kept alive its military ardour. It ſeemed that a free nation ought not to truſt to mercenaries for protection and defence. Amidſt the defects and the languor of their military arrangements, the people felt a confidence in themſelves, and a ſenſe of independence. Though they admitted, therefore, of the act of Charles II. as an uſeful regulation in the decline of the feudal army, and of the national militia, they had never any reſpect for troops at the command of the ſove-

* Stat. 2. Rob. I. cap. 25. l. 2. 3. 4. 5. Stat. Wilhel. cap. 31. Du Cange gloſſ. voc. Sergentiae parvae.

§ Stat. Wilhel. cap. 13. l. 2. Leg. Burg. cap. 23. Stat. Alex. cap. 24. l. 2. 4. 5. 6. 7.

† James IV. parl. 1509, cap. 102. James V. parl. 1522. cap. 3. 4. Q. Mary, parl. 1547, cap. 4. 5. 6. James VI. parl. 1571, cap. 41. 42. Will. and Mary, parl. 1690, cap. 37.

reign, in his pay, and eſtabliſhed in times of peace as well as war.

The example of France has not allured the Scottiſh nation to be in love with a ſtanding force. The glory, indeed, acquired in that kingdom by the Scots guards and the Scots gendarmes [E] had been infinitely flattering, and was ſtrongly expreſſive of the ſuperiority of bodies of men who could fight with art, as well as courage, and who being kept perpetually in diſcipline, were to conſider war as their profeſſion; and, of the power and grandeur which they might ſecure by ſimilar eſtabliſhments, the Scottiſh monarchs could not be inſenſible. But they dreaded the pride of their nobles, and the fierce reſentment of their people.

Mary of Guiſe alone, when Queen-regent, had the raſhneſs to take a violent ſtep towards a meaſure ſo odious, and to which the way ought to have been prepared by ſlow and wiſe precautions. It was propoſed in parliament, that a ſurvey of the property of the kingdom ſhould be made; that a tax ſhould be lifted from every perſon, in proportion to his wealth; and that this revenue going to ſupport a ſtanding guard for the frontiers, the nobility might remain in quiet in their caſtles, unleſs when the country was invaded by an uncommon and very dangerous enemy. A permanent tax on land, and a mercenary army at the command of the crown, were too formidable to be liſtened to with moderation by the people. The diſguiſe was too tranſparent to deceive. A generous nation gave way to thoſe emotions which lead to inſtant and determined action. Barons and freeholders, to the number of three hundred, carried their remonſtrances to the Queen-regent, in that bold and aſpiring language which becomes men who conſider deſpotiſm as a greater evil than death. Terror ſucceeded to temerity; and a project, formed without thought, was abandoned with precipitation *.

Under the impulſe of a high ſenſe of liberty, the people of Scotland were not to degenerate from valour. Yet time was deepening the decline of its military ſchemes; and a knowledge in the art of war was to advance, while its eſtabliſhments were to periſh. The confuſions of a ſyſtem which could not agree with refinement and the arts, were to be inſupportable, when

[E] Book II. Chap. V.

* Buchanan, Rer. Scot. hiſt. lib. xvi.

the

the Revolution had extended its freedom and liberality of ſentiment. The Union of the two kingdoms made the nobles to reſign the few rights that remained to them of feudal importance; and, in the ſtruggles of the two Rebellions to ſupport the Houſe of Stuart, which followed theſe great events, a general diſgrace was to be ſuſtained by the Scottiſh nation itſelf. It was to be diſarmed altogether. By their operation in connection with former cauſes, a termination was put to the feudal troops, and to every ſhow of a national militia.

Such have been the fates of theſe eſtabliſhments. Advantages were mixed with a neceſſary expreſſion of diſpleaſure. The ſtanding army, which, after the Union of the two kingdoms, became a part of the Britiſh conſtitution, communicated its dangers as well as its utilities to Scotland. The Scots ſerve in it, and add to its glory; but they now have the enjoyment of no other military power; and, if this army, in the courſe of melancholy convulſions, were to march againſt them; or if, finding full employment in another quarter, this army could not afford to them any protection againſt a common enemy, they would be found in a condition the moſt helpleſs. Scotland has no militia to defend it. The people, who ought to be their own protectors, are without arms.

Beſide its regular troops, England has to boaſt its militia. This is the barrier to which it looks for the preſervation of its liberties. This is the defence which the legiſlature itſelf has declared to be 'eſſentially ne-'ceſſary to its ſafety, peace, and proſperity *.' To an eſtabliſhment of this kind, Scotland has alſo a claim which cannot be controverted. The right of ſelf-preſervation, the freedom of the conſtitution, and the firm and liberal connection of the ſiſter-ſtates, are illuſtrative of this claim. The barrier, the defence poſſeſſed by the one, is not leſs 'eſſentially neceſſary to the ſafety, the 'peace, and the proſperity of the other.'

The advantage which Scotland loſt was only for a time, and not for ever. The cauſes of a precaution which was once proper, are not always to endure. They will paſs away; and the continuance of the precaution will then be not only unjuſt, but imprudent. The period approaches when even the venom and activity of faction ſhall not be able to excite any improper ſuſpicion

* 30. Geo. II. cap. 25. ap. Ruffhead, vol. viii. p. 80.

between the two nations. Jacobitiſm is retiring to ſeek obſcurity and repoſe in its grave. The influence of clanſhip is almoſt utterly decayed. The moſt remote corners of Scotland have received the protection of laws, and the ſecurity of regular courts; and, at length, they underſtand the value of this condition. The chieftain is no longer a commander and a magiſtrate. He can neither terrify with his power, nor inſult with his juſtice. The habits of rapine, and the conſequent proneneſs to inſurrection, have given way to the propenſities of induſtry, and the love of peace.

CHAPTER III.

The Revenue of the Sovereign, and the Expences of Government.

SECTION I.

The Demeſnes of the Crown. The Gifts of Subjects to the Prince. An Enumeration of different Branches of Revenue. The Care beſtowed on the Royal Property. Reſumptions of Royal Lands and Grants; and Annexations of new Wealth to the Crown. A general Concluſion concerning the Revenue of the Sovereign.

THE ſupport and grandeur of the ſovereign were a capital object of attention in every feudal ſtate. The demeſnes of the crown in Scotland, as in every other European monarchy, were in proportion to the extent of the kingdom *. Originally, it is to be conceived they were fully ſufficient for the royal neceſſities and ſplendour. And in the ſimple times which preceded the perpetuity of the fief, when extraordinary occaſions preſented themſelves, the prince received effectual ſupplies of revenue from the benevolence and gifts of the vaſſals, and of the poſſeſſors of allodiality †. As ſociety

* Spelman, gloſſ. voc. Dominicum.

† Du Cange, gloſſ. voc. Donum. Spelman, voc. Xenia.

improved, and the fief became hereditary, his wants were to increaſe. It was expedient that his property ſhould be greater. His claims acquired a ſolidity; and new ſources of wealth were to be diſcovered.

By the rules of the feudal inſtitutions, it was frequently to happen, that eſcheat, devolution, and forfeiture, were to ſend back to the prince the lands of the barons and vaſſals *in capite*; and, when theſe did not go away from him in new grants, it was the practice to give them out in cuſtody to farmers of ſheriffs, who anſwered to the exchequer for their profits. Hereditary offices, with the poſſeſſions in connection with them, were returning alſo to the crown by ſimilar methods, and were managed in a ſimilar manner ‡.

The profits of wardſhips, reliefs, and marriages, were prodigious. The incident or perquiſite of aid might be demanded by the ſovereign when his eldeſt ſon was knighted, when his eldeſt daughter was married, and when he himſelf was ranſomed. It might be demanded, though with leſs legality of claim, to relieve any other important or preſſing neceſſity §.

A revenue aroſe out of vacant biſhopricks, out of monaſteries of royal foundation, and out of the neceſſary juriſdiction of the prince in eccleſiaſtical affairs *.

The wreck of ſhips within the kingdom, royal fiſh, royal mines, waifs, eſtrays, treaſure of which no perſon could claim the property, the cuſtody of lunatics and of their lands, the goods of felons and convicts, were other branches of the riches of the crown †.

Fines or preſents were made to the ſovereign for liberties and privileges; and fees were exacted for grants and confirmations of offices and property. The profits which grew out of proceedings at law were valuable, and almoſt without end. Amerciaments for crimes and treſpaſſes were extenſive, and generally arbitrary Confiſcations were frequent. Towns preſented great ſums for particular favours and franchiſes. And various duties or cuſtoms were paid for different objects of merchandize,

‡ Regiam Majeſtatem, lib. 2. cap. 45. 55. Quon. Attach. cap. 19.

§ Reg. Maj. lib. 2. cap. 71. 73. Stat. Rob. III. cap. 19. Du Cange, voc. Auxilium.

* Reg. Majeſt. lib. 2. cap. 23. Stat. 2. Rob. I. cap. 1.

† Quon. Attach. cap. 48. Reg. Majeſt. lib. 2. cap. 46. Stat Alex. II. cap. 25.

and for the exportation and importation of commodities†. [F].

An extenſive revenue was thus poſſeſſed by the Scottiſh princes, and it failed not to maintain their political conſideration. It was to ſuffer at times from a pious liberality to the church, from a weak profuſion to favourites, and from the diſgraceful rapacity of ſtateſmen. But it was at no period to be either contemptible or ſcanty. The maxim, that the demeſnes of the crown could not be alienated, though often infringed, was feſtered more carefully in Scotland than in any other feudal ſtate; and it was thought, that every improper donation or abſtraction of the royal revenue, ought to be challenged and revoked.

Robert Bruce aſſembled a parliament for the purpoſe of re-annexing to the crown thoſe fees and eſtates which in times of war and confuſion had paſſed away from it. The poſſeſſors of crown-lands were called upon to produce their charters. Many of them had no charters to produce, and many were averſe from all inquiries of this kind. A body of them acting in concert, drew their ſwords. 'Our ſwords,' ſaid they, 'are the tenure by 'which we hold our eſtates, and with their points we 'will defend them.' The conſpiracy which had been formed was detected. King Robert diſplayed his vigour and addreſs. And to this mutinous ferocity, the black parliament, conſulting the authority of law and government, gave a neceſſary check by executions and forfeitures *.

James I. amidſt the other important tranſactions of his reign, paid a proper attention to the royal demeſnes and revenue. He ordained the ſheriffs to inquire into the lands, poſſeſſions, and rents which pertained to the crown, and which had been conſidered as its property in the times of David II. Robert II. and Robert III. ‡. He conſulted the charters of his tenants. He made it paſs into a law, that no governor or regent ſhould aſſume the privilege of alienating any lands which ſhould

† Reg. Maieſt. lib. 1. cap. 6. 8. 18. 26. 27. lib. 3. cap. 1. 24 36. lib. 4. cap. 10. Quon. Attach. cap. 54. Stat. Rob. III. cap. 8. Leg. Burg. cap. 27. 141. 142. Stat. Gild. cap. 41. Stat. David II. cap. 37. 49. Stat. Wilhel. cap. 36. Stat. James I. parl. 1. cap. 8. 21. 22. parl. 2. cap. 40. parl. 7. cap. 101.

[F] Book II. Chap. VI.

* Buchanan, Rer. Scot. hiſt. lib. viii.

‡ Stat. James I. parl. 1424, cap. 9.

fall

fall to the crown. He called upon the Earl of March to defend the title by which he held a forfeited earldom; and, by a parliamentary judgment, and after a full diſcuſſion of his claims, he annexed the eſtate and its dependencies to the crown. He recalled all lands which had been got by uſurpation, and which were poſſeſſed under improper deeds. He annulled the grants to private men, of many forfeitures, eſcheats, and wards which had belonged to the crown. He made known, the inefficacy of donations of royal lands, and royal property, when made by regents and ſtateſmen, to ſecure their popularity, and to protect themſelves from envy. Frequent and eminent examples of juſtice added to the revenue of the crown, guarded it from encroachments, and were leſſons of inſtruction to future princes *.

The eſtates of the kingdom, the clergy, the barons, and the commiſſioners of the boroughs, during the minority of James II. made a revocation of all lands, poſſeſſions, and property, which had belonged to James I. and had been granted without a parliamentary authority. And they ordained, that, till the majority of their prince, no alienations of the royal wealth ſhould be effectual, without their conſent †.

James II. had genius and talents for government. He neglected not the intereſts of his revenue. A poſterior law inveſted him in many caſtles, gave him the lands in connection with them, and the grant of different manours, lordſhips, and earldoms. It annexed to the royal property the whole cuſtoms of Scotland, and it permitted the ſovereign to ſatisfy, by compenſation, thoſe who had been penſioned upon them. It was the wiſh of parliament that theſe poſſeſſions ſhould remain with the crown. No private deed of James, nor of his ſucceſſors, was to diſunite them from it. To their alienation, gift, or ſale, the advice of parliament was neceſſary, and the concurrence of weighty reaſons of ſtate.

The idea eſtabliſhed itſelf, that the ſovereign was not to waſte the patrimony of the crown. The parliament interfered to correct the extravagance of princes. Nobles, courtiers, farmers of the revenue, and all whoſe rapacity and artfulneſs had extorted and won from the openneſs, the facility, and the generoſity of kings, any

* Stat. James I. parl. 1431, cap. 133. Parl. 1434, cap. 135.

† Stat. James II. parl. 1437, cap. 2.

grants of the royal property, were to hold them by a precarious tenure. Acts of reſumption were to ſtrip them of theſe diſhonourable acquiſitions; and even to command the reſtitution of the profits they had received *.

James III. had no capacity for real buſineſs, was fond of the arts, and of amuſements, addicted to favourites, and involved in diſputes with his nobles. Yet the doctrine of attending to the royal revenue, had taken ſo firm a root, that a law of revocation of all gifts and grants to the prejudice of juſtice, and of the ſtate, diſtinguiſhed his reign. The earldom of Roſs, with other eſtates, and with caſtles and houſes of ſtrength, were knit and united to the crown; and a parliamentary act enjoined the maſter of the houſehold, and the lords of council, to be attentive to enforce the regular payment of the king's rents †. [G].

James IV. was magnificent and bold, and burned for opportunities of renown. He repoſed a flattering confidence in his nobles, and he was beloved by his people. The eſtates of the kingdom were not inattentive to his dignity and ſplendour. Men of high rank were appointed auditors of the king's accounts ‡. Revocations were made of royal lands and royal property, to an ample extent, and in ample forms ‖.

The power exerciſed by the princes of Scotland, of reſuming, on their majority, all gifts and diſpoſitions of their revenue granted by governors and regents, was exerted by James V. §. An act alſo was paſſed for regulating the buſineſs of his exchequer ¶. And conformably to the practice of the kings, his predeceſſors, he added to the royal demeſnes all the unannexed lands, lordſhips, and caſtles, of which he was poſſeſſed; depriving himſelf and his ſucceſſors of all power of alienation over them, without the advice and conſent of parliament, and without the ſpur and neceſſity of great and controuling motives **.

* Stat. James II. parl. 1455, cap. 41.

† Stat. James III. parl. 1476, cap. 71. 72. Parl. 1483, cap. 91. Parl. 1487, cap. 112.

[G]. Book II. Chap. VII.

‡ Black acts, p. 87.

‖ Stat. James IV. parl. 1488, cap. 5. Parl. 1489, cap. 10. 22. Parl. 1493, cap. 50. 51.

§ Stat. James V. parl. 1540, cap. 70.

¶ Stat. James V. parl. 1540, cap. 96.

** Stat. James V. parl. 1540, cap. 84. 115.

Theſe maxims, and this attention, were practiſed by Mary, whom our hiſtorians have conſpired to adore or to calumniate *. They were not forgot by James VI. who was ever dreaming of prerogatives which no ſovereign can exert but in a nation of ſlaves †. And in the reign of this prince, the annexation of the church-lands to the crown, in conſequence of the reformation, brought to it an abundant acceſſion of wealth ‡. Charles I. ‖. and Charles II. §. were not of a nature to diſpiſe rules and forms, which were to aggrandize the prerogative and the crown. And James VII. who, to the uſeleſs virtues of a monk, added the deſtructive vices of a tyrant, was in haſte to exerciſe them ¶. [H].

Thus, in every period of the hiſtory of Scotland, it is to be thought, that the revenues for the royal ſtate were fully ſufficient for its wants and its grandeur. They were indeed to fluctuate, and to give way to accident and conjuncture. But if abuſes were frequently to take place, they were no leſs frequently to be corrected. And the power of reſumption of royal property, poſſeſſed and exerciſed by our princes, offered a conſtant bulwark for the preſervation of their wealth. Nor ought it to be forgotten, that the crown lands had a relation to the varying condition of ſociety. They were to ſtretch and to comply with the wants of the prince; and time was making new additions to his revenue. The authors, accordingly, who have been ſolicitous to deſcribe the monarchs of Scotland as abject from poverty during the prevalence of fiefs, betray an ignorance and inattention which admit not of apology. They violate the evidence of our ſtory, and the evidence of our laws.

* Stat. Mary, parl. 1555, cap. 28.

† Stat. James VI. parl. 1585, cap. 17. Parl. 1587, cap. 31. Parl. 1593, cap. 176. Parl. 1600, cap. 2.

‡ Stat. James VI. parl. 1587, cap. 29.

‖ Stat. Charles I. parl. 1633, cap. 9. 10.

§ Stat. Charles II. parl. 1661, ſeſſ. 1. cap. 53. Seſſ. 2. cap. 8.

¶ Stat. James VII. parl. 1. cap. 40. 42.

[H]. Book II. Chap. VIII.

SECTION

SECTION II.

The Expence of Government in diſtinction from the Revenue of the Prince. The great Source of both. Innovations with reſpect to them. The Sovereign finds himſelf in a critical Situation. The Spirit of Feudality gives way to that of Money and Commerce. The Aid for the Prince. The Aid for the Nation. Taxations on the Foundation of the Prerogative. Parliamentary Taxations. Extents, or Valuations of Land. The old Extent. The new Extent. The valued Rent.

THE natural eſtabliſhment for the grandeur and the defence of a feudal ſtate, was the grant of land from the crown. It created and maintained a wide arrangement of troops, of which the ſovereign was the commander. But civil juriſdiction, as well as military command, was connected with fiefs; and thus the offices of juſtice, as well as of war, were diſcharged by the vaſſals of the crown, and the other holders of territory. The landed property of the kingdom was accordingly the great ſource of wealth to the ſovereign and the government. And while the feudal inſtitutions maintained their original ſpirit and vigour, they were well calculated for the purpoſes both of defence and of juſtice. All taxes were then unneceſſary, and unknown.

But the ſyſtem of fiefs, ſo ſuitable to the times in which it roſe, could not agree with the maxims of commerce, and with the growing pride and luxuries of ſociety. It was to undergo variations; and theſe were to act upon the ſovereign, and upon government. Whatever care might be beſtowed upon the demeſnes of the prince, the grant of land, which paid the military and the political expence of the ſtate, could not be upheld in a fixed and certain ſituation. It ſuffered encroachments, and became ſubject to alienation. The military arrangements of fiefs were to be turbulent, and without efficacy. Their civil juriſdiction was likewiſe to decay. The crown-vaſſals were to be unfit for war, and unfit for juſtice.

In the breaking down of the feudal ſyſtem, it ſeemed to the prince, that cruel diſorders were to threaten the moſt fatal revolutions, and to diſſolve all the parts of the government. They were yet the germ of the ſtability that was to be given both to the crown and to liberty.

By

By the ſcheme of feudality, land was the medium of the conduct of men. It called them to act, and it was the reward of their action. It was the ſalary of the captain and the judge. Now, in a ſituation where the captain and the judge were not diſpoſed to be active, or were diſqualified for their duties, calamities were neceſſarily to enſue. But the utilities of ſociety, and the purpoſes of civil life, were to be fulfilled. If the proper actors were incapable or idle, they had no claim to the free enjoyment of lands, which had been given under a burden. It was perceived that other men might diſcharge their duties; and out of their eſtates a payment was to be drawn for the ſatisfaction of theſe. The value, the largeneſs, the extent of land, rendered it a moſt improper inſtrument for action. Money was to be ſubſtituted in its place, and to pay the ſervices to which it had been ſubjected. All the appearances of ſociety were to be altered. Feudality decaying, commerce was to flouriſh. The contributions called out from the proprietors of territory, were to be in diſcharge of duties which they owed to the ſtate. And as trade was to increaſe, the land of a kingdom was not to be confined excluſively to taxation. The merchant and the manufacturer were to contribute for the protection afforded to them againſt an enemy, and againſt injuſtice. Cuſtoms and exciſe were invented; and time was preparing the buſineſs and the decorations of that complicated, that magnificent, and that animating ſcene, which nations are to exhibit in the ages of perfection and opulence.

The conduct of the ſovereign, in the diſordered times of feudality, illuſtrates this reaſoning. When preſſed himſelf by an urgent occaſion, the rules of the feudal inſtitutions had taught him to have recourſe to the aid, or the benevolence of his vaſſal. This aid, which was at firſt the voluntary preſent of his tenant, he was in time to command as a right. Inſtead of making a requeſt for a ſupply, he iſſued a mandate for it *.

This exaction had a reference to himſelf; and he was to act in a ſimilar method to ſupply the exigencies of government. When his vaſſals were not to perform their ſervices, he was to levy an aid or a fine out of their lands, to compenſate this neglect. Conſcious of incapacity, or averſe from all inclination to their duties, his

* Sir John Dalrymple, treatiſe on feudal property, ch. 2. ſect. 2.

vaſſals

vaſſals did not oppoſe this demand. And it was juſt that the grant of land ſhould provide for the ends for which it was given. Habits lead to eſtabliſh a rule; and cuſtom is often as effectual as law. Aids feudal and political, aids with regard to the crown *, and with regard to government †, grew into taxations. And the ſovereign, when impelled by his humour and prodigality, as well as when urged by great and national motives, lifted up contributions for his own uſe, and for the uſes of the ſtate.

Nor on occaſions in which the government and the ſtate were more particularly concerned, did the prince confine himſelf to the lands which were holden in feudality; and of which it was the intention to provide for public defence, and for public juſtice. Territory in ſoccage and in allodiality was likewiſe ſubjected to his tyranny. And *Hidage* and *Carucage* were to denote in Scotland, as well as in other nations, thoſe formidable taxations which were to be extorted and gathered, without diſtinction, from the whole landed property of a kingdom ‡.

It was thus that taxations were to be levied on the foundation of the royal prerogative; and they did not ſeem to be oppreſſions in their riſe. A real and a preſſing expediency gave a ſanction to them. But their exorbitancy and their frequency were ſoon to awaken ſuſpicions. Sovereigns, goaded on by avarice, and allured by ambition, made extenſive and diſguſting encroachments upon the property of their ſubjects. The power of taxation was found to be a moſt deſtructive privilege. From complaining of its abuſe, the people were to inquire into its origin and propriety; and princes, in order to ſooth and flatter them, were to declare, that the contributions they received, ſhould not be accounted as precedents and as law.

But in matters of this high importance, deceit and addreſs were not always to prevail. There is nothing ſo valuable to men as their property; and flattery cannot conceal the outrage of inſult, and the violence of oppreſſion. The nation demanded to be conſulted in the

* Spelman and Du Cange, voc. auxilium. Anderſon, Diplomat. Scotiae. tab. 35.

† ‡ Brady, tracts, p. 117. 118. 120. Du Cange, voc. Scutagium.

‡ Du Cange gloſſ. voc. Carrucagium, Hidagium. Spelman, voc. Carua, Hidagium. Brady, gloſſary to his tracts p. 3. Reg. Majeſt. lib. ii. cap. 16.

aids

aids it was to beſtow. The original freedom of the government had conferred upon them this right; and it was illuſtrated by frequent declarations from princes, that the aids they received were gratuitous contributions. The authority of the parliament was to ſucceed to the will of the ſovereign. The national council, and not the prerogative of the king, was to judge concerning the wants of the ſtate, and the taxations which were expedient.

Previous to the times of William the Lion*, taxations had taken place on the foundation of the prerogative; and the mandates of the prince had often diſtreſſed the lands of the kingdom. But, as in this reign there are examples of parliamentary aids, it is to be thought, that the power of taxation had already paſſed away from the ſovereign to the nation; and that the age of William is to be conſidered as the epoch of a tranſaction the moſt memorable.

When this high-ſpirited prince was the priſoner of Henry II. the Scottiſh nation ſurrendered its independency to procure his enlargement. Henry did not ſcruple to receive the homage of William and his barons. But Richard I. ſmit with the glory of undertaking a cruſade, conſented to reſtore its independency to Scotland, conciliated the affections of William, and received ten thouſand marks as the price of this reſtitution. Ten thouſand marks were equal to a hundred thouſand pounds of our preſent money. This immenſe ſum could not be ſupplied out of the private revenue of William; and it was to operate a national advantage. It was levied accordingly by an aid from his ſubjects; and this aid was by a parliamentary authority †.

There is evidence in this reign of a taxation by parliament, ſtill more explicit and particular. In conſequence of an agreement with king John of England, who ſucceeded Richard I. William became bound to pay to him the ſum of fifteen thouſand marks. For the diſcharge of this engagement a parliament was called at Stirling. The matter was not long in diſcuſſion. The barons gave a grant of ten thouſand marks, and ſix thouſand marks were given by the boroughs ‡.

* He was crowned, an. 1165.

† Buchanan, Rer. Scot. Hiſt. lib. vii. Brady, Hiſt. of England, vol. I. Appendix, No. 67. No. 68.

‡ Fordun, lib. viii. Lord Hailes, Annals of Scotland, vol. I. p. 139.

From

From the moment that aids on land, whether by the authority of the prince, or of the parliament, were to be levied, it was neceſſary that valuations of the territory of the kingdom ſhould direct the aſſeſſment of the proprietors; for, without theſe, no juſtice or equality could be obſerved in the mode of taxation. To ſearch, however, in our hiſtorians, for the firſt ſurvey or extent that was made in Scotland, muſt be in vain. No memorial of this tranſaction is to be found. But long before the days of Alexander III. valuations of its territory were to be framed, to be conſidered as rules of taxation, and to be aboliſhed. This æra, notwithſtanding, is the fartheſt point to which, it is ſuppoſed, that we ought to look on the ſubject of extents. The lawyers of Scotland have ſaid ſo. The general valuation by Alexander III. is treated with a moſt particular reſpect. It is called by way of diſtinction, *the old extent.* [I].

But lands being to fluctuate in their rents and profits, no rule that was fixed could anſwer long the purpoſes of taxation. A re-valuation of lands, it is conjectured, was made, when a tax was to be impoſed for the ranſom of David II*. And there is an indubitable evidence of a valuation in the times of James I †. But the variations of property and of money, by detracting from the utility of theſe meaſures, gave riſe to other regulations. It was ordained in the reign of James III. that the jury ſhould expreſs in their inquiry, or rëtour, not only the old extent of the eſtate of a deceaſed proprietor, but its exact value at the period of the inveſtiture of the heir. This tranſaction was deemed equal to a valuation; and it obtained the appellation of *the new extent* ‡.

Principles or maxims of taxation, in conformity with the circumſtances of the times, and in conſiſtency with juſtice, were in this manner to be placed in the eye of the legiſlature. But while the ſtate was thus directed how to levy its ſubſidies, the ſovereign and ſubjects-ſuperior were alſo informed how they might adjuſt and collect the feudal caſualties of their vaſſals. The new extent was the meaſure of aſſeſſment in the latter condition. In the former, the old extent was eſteemed the more equitable mode of taxation.

[I] Book II. Chap. IX.

* Mr. Erſkine, Inſtitute of the law of Scotland, p. 225.

† Black Acts, fol. 3. and 4. James I. parl. 1424.

‡ Parl. 1474, cap. 56.

To

To Robert I. the parliament aſſembled at Cambuſkenneth, in the year thirteen hundred and twenty-ſix, gave a ſubſidy, during his life, of the tenth penny of all the lands of the earls, barons, burgeſſes, and freeholders throughout the kingdom. This ſubſidy, which was rendered neceſſary by the expences and calamities of long wars, was to be levied according to the old extent *.

According to the old extent, all ſubſidies were levied till the uſurpation of Oliver Cromwell. His parliament, in the year 1656, eſtabliſhed a new method of taxation. Upon the Reſtoration, however, the old extent was again recurred to †. But it was almoſt immediately abandoned; for, when a taxation was impoſed in the year 1667, the new method was adopted and improved; and in this ſtate it continues to be in obſervation. Extents on the foundation of it by the commiſſioners for levying the land-tax, have the name of *the valued rent*; and this valuation is the rule for the aſſeſſments of the property of individuals ‡.

* See the Indenture of this tranſaction, ap. Public Papers annexed to this treatiſe.

† Act of the convention of eſtates, 1665.

‡ Act of the convention of eſtates, 1667.

CHAPTER IV.

Juriſdiction and Courts.

SECTION I.

The King's Palace and Court. The Members of the King's Court. The Officers of the Crown. The Chancellor. The Juſticier. The Chamberlain. The Seneſchal, or the Steward. The Conſtable and the Mareſchal. The Influence and Luſtre given by them to the Crown, and by the Tenants in Capite.

IN the fabric of feudality, the object which attracts moſt the attention, is the ſovereign. His power was great, his ſplendour greater. He was the bond of connection which tied together all the parts of the kingdom.

The

The barons and the military tenants of the crown were bound to attend him as their chief lord. To his palace they reſorted to pay attention to him, to make themſelves known, and to acquire diſtinction. Coronations, creations into knighthood, and all ſolemn feſtivals, were celebrated in it.

It was alſo in his palace that the ſovereign was uſually to hold his court, and to exerciſe juriſdiction. The nobles and military tenants of the crown were conſtituent members of this aſſembly, and met in it at ſtated times. The buſineſs of the ſovereign, and the buſineſs of the people, were matters of its deliberation. Here the vaſſals of the prince might offer him their advice on ſubjects of ſtate; and here the diſputes of the great were decided; and appeals were received from inferior judicatures. In this convention the ſovereign might act in his own perſon, or by his juſticier. It was termed the king's court, or the king's council*.

Out of the number of the nobles, and the tenants *in capite*, the different officers of the crown were elected. Theſe were the chancellor, the juſticier, the chamberlain, the high ſteward, or ſeneſchal, the high conſtable, and the mareſchal. The duties they exerciſed individually were of the higheſt and the moſt general importance; and when they met together in the royal palace, they were the moſt illuſtrious ornaments of the *Aula Regis*, or the court of the king.

The chancellor ſuperintended and directed the buſineſs of the chancery. He examined all the charters which were to paſs the great ſeal, of which he was the keeper. He directed royal grants of property and office; and writs and precepts, in judicial proceedings, received their ſanction from him. His dignity advanced as charters and public inſtruments of the crown were to multiply. In the reign of James III. he was uſually to rank after the princes of the blood. James VI. by an expreſs ordinance, aſcertained his precedency beyond all other officers. And in the reign of Charles II. a particular law declared, that by virtue and in right of his office, he was to preſide in all meetings of parliament, and in the public judicature of the kingdom†.

* Du Cange, gloſſ. voc. Curia.

† Malcolm II. cap. 2. Stat. Rob. III. cap. 1. and 9. Crawfurd, Officers of the crown, and of the ſtate, p. 3. Stat. Car. II. parl. 1661, cap. 1. Spelman, voc. Cancellarius.

Of

Of the great juſticier, or juſtice-general, it is to be thought, that, in very antient times, he ſurpaſſed in authority and ſplendour all the other officers of the crown. He exerciſed an univerſal juriſdiction both in civil and criminal matters*; and, in the abſence of the ſovereign, he was even to act as viceroy, or as guardian of the ſtate. He held his court at two terms in the year†. His arm could reach from one corner of the kingdom to the other. But amidſt the general extenſiveneſs of his powers, it is to be remarked, that treaſon, and the four pleas of the crown, belonged to him in a more peculiar manner‡. But as buſineſs was to increaſe, and to grow complicated, it became neceſſary to appoint *juſtices-errant*, or *itinerant* ‖. Theſe were ſubordinate to the great juſticiary. They travelled through the kingdom to execute juſtice; and their decrees might be ſubmitted to his review §.

The high chamberlain had the care of the king's perſon, and was keeper of the royal wardrobe. In matters of finance, he had a general authority; and he exerted juriſdiction over the train of officers who collected the revenues of the crown. Of all the royal boroughs, he poſſeſſed a peculiar charge; and he held his airs and circuits in them. He inquired into the management of their magiſtracies, and into the applications of their property. He decided the complaints and diſputes of burgeſſes and craftſmen, and adjuſted the prices of proviſions. He regulated the modes of barter and ſale; and judged in whatever had a reference to conveniency and police ¶.

Next to the chamberlain was the high ſteward. He had the government of the king's houſehold and family. He furniſhed the palace with proviſions, procured corn for the king's horſes, attended to the royal foreſts and game, and inſpected the behaviour, and puniſhed the delinquencies of the king's domeſtics and ſervants. In ſome foreign nations, this officer was not of ſuch high precedency as in Scotland. Here, from the perſonal

* Reg. Majeſt. lib. i. cap. 1. 5. lib. ii. cap. 16. Iter Juſtitiarii.

† Stat. Rob. III. cap. 30. Quon. Attach. cap. 79.

‡ Reg. Majeſt. lib. i. cap. 1. lib. iv. cap. 7. 8.

‖ The *Miſſi Dominici* of the Franks were ſimilar officers; and *Juſtices Itinerant*, it is probable, were known in all feudal countries. Du Cange, Gloſſ. voc. *Miſſi*.

§ Spelman and Du Cang. voc. Iter. Juſtitiarius.

¶ LL. Malcol. II. cap. 4. Iter. Camerarii.

greatneſs of the houſe, in which the office came to be hereditary, he grew to a great and ſhining eminence. The title of the office was aſſumed as the ſurname of the family who had poſſeſſed it; and they were to mount the Scottiſh throne in the perſon of Robert II. and to be illuſtrious and intereſting in alliances and blood, in arms and virtues, in weakneſſes and misfortune *.

The high conſtable poſſeſſed ſignal prerogatives. When the ſovereign, upon his advancement to the royalty, was to ſwear fidelity to his ſubjects, and to pay homage to the laws, he delivered his naked ſword into the hands of the conſtable. 'Uſe this in my defence,' ſaid he, 'while 'I ſupport the intereſts of my people; uſe it to my de-'ſtruction when I forſake them †.' A naked ſword, of conſequence, was the badge of his office. When the king's armies were in the field, he had a ſupreme command over all perſons. He deſcribed the ground for the camp, placed the centinels, ſent out ſpies to obſerve the enemy, and gave their orders to all the officers. But when the troops were in caſtles and garriſons, his authority did not extend to them. In points of honour he exerciſed a ſuperior juriſdiction; holding courts of chivalry, and regulating the ceremonial of thoſe duels, in which pride and virtue vindicated their rights and dignity from rudeneſs and inſult. All diſorders and riots, bloodſhed and ſlaughters, which were committed, and took place within four miles of the king's perſon, of the parliament, and the privy-council, were judged and puniſhed by him. Military contracts and cuſtoms of arms were proper objects of his cognizance; and he had powers of action in all matters connected with war, in which the common law could afford no aſſiſtance ‡.

Though inferior in rank to the conſtable, the mareſchal was of great dignity. The conſtable preſided over the whole army; the mareſchal was maſter of the horſe. In the court of chivalry they were judges, and decided there concerning matters of honour and of arms ‖. In the camp and in the field they united their counſels, to direct

* L.L. Malcol. cap. 5. Du Cange, voc. Seneſcallus.

† It was in allusion to this form, that Buchanan made a naked ſword to be repreſented on the money coined in the minority of James VI. with theſe words, *Pro me, ſi mereor, in me.* Anderſon, Diplom. et Numiſmat. Scot. Theſaur. tab. 166.

‡ Spelman, voc Conſtabularius. Du Cange, voc Comes Stabuli.

‖ Sir Thomas Craig affirms, that, in the court of chivalry, the mareſchal was the ſole judge, and that the conſtable had no authority there.

direct the troops, and to perform with ſucceſs the duties of commanders §. [K].

Theſe officers, ſo various in their privileges, and ſo important, were in ſubordination to the ſovereign. He was the fountain of honour and juſtice; and his court, next to the parliament, was the ſeat of higheſt judicature. Pleas of the crown, and the common pleas, might be judged in it. His ſubjects might ſubmit to him their wrongs, civil and criminal, by complaint and by appeal; and it was his duty to protect the weak, and to give relief to the injured.

The officers of the crown, deriving their diſtinctions and powers from the ſovereign, were to add to his greatneſs, in their own perſons, and in thoſe of their vaſſals and dependants; and it is to be conceived, that, with the other tenants *in capite*, who ſtudiouſly diſplayed their magnificence and wealth, they were able to caſt a ſplendour around his throne, which was ſuperior to the pomp and parade of more poliſhed ages [L].

SECTION II.

The State and Juriſdiction of the Nobles. The Baron, the Earl. Palatinates or Regalities. The Courts of Tenants in Capite of the Crown; and of the Tenants of a Subject-ſuperior. The Poſſeſſors of ſingle Fees; and the Poſſeſſors of the Members of a Fee. The Subordination of Juriſdiction.

THE nobles were eminent in grandeur and in juriſdiction. The faſhion of their palaces bore a reſemblance to that of the ſovereign. The baron had his ſteward, his chamberlain, his mareſchal, and his other officers. With theſe he held councils; and their advice directed him in the grants of his property, and the inveſtiture of his vaſſals, in the revenue of his ſeigneurie, and in all the buſineſs which had a reference to his houſehold and greatneſs. To his intereſt they were attached by the knight-fees he beſtowed upon them. In their military capacity, they attended him when he marched

there. *Jus Feudale, lib.* i. *Dieg.* 12. He gives, however, no reaſons for his notion; and the propriety of the oppoſite opinion is demonſtrated by my Lord Coke. 4 *Inſtitute, cap.* 17. 18.

§ Daniel, Hiſtoire de la Milice Francoiſe, liv. 3. Spelman, Gloſſ. voc. Mareſcallus.

[K]. Book II. Chap. X. [L]. Book II. Chap. XI.

againſt an enemy; and they guarded at home his houſe of ſtrength or his caſtle *. [M].

His juriſdiction was ample, and extended over his eſtate or territory. In his court he was a miniſter of juſtice to his vaſſals and retainers. He judged of all civil deeds, and determined concerning all crimes, but treaſon and the four pleas of the crown, which were murder, robbery, fire-raiſing, and rape. His tenants were the ſuitors of his court, and aſſiſted in his deliberations and judgments. The deciſions he pronounced were put in execution by his bailiffs, when no appeal was carried to the ſovereign. Fines, forfeitures, and impriſonment, were uſually the puniſhment of leſſer offences. The blood of the criminal atoned for atrocious injuries †. [N].

The ſtate and juriſdiction of the earl were ſimilar to thoſe of the baron. But the court in which the former exerciſed the more ſolemn acts of juriſdiction, was the court of the county, to which every holder of property in land was a ſuitor. The power of the baron did not go beyond the limits of his ſeigneurie. The earl, however, poſſeſſed not always his county as a fief; and when he enjoyed only a portion of its property, and was conſtituted to exert authority over the whole, the third penny of the county, or a third part of the profits of juſtice, was to reward this extenſion of his trouble ‡. [O].

An earldom and a baronial fief, though great and ſplendid, were inferior to the fief of regality. The lords of regality in Scotland were the ſame with the earls palatine in England ‖. Their powers were like thoſe of the ſovereign. They coined money, enacted laws, and lifted taxes within their dominions. They had a right to declare war, to levy troops, and to exerciſe the prerogative of life and death. Their juriſdiction was ſupreme and without appeal. The king's writ did not run within

* Regiſtrum Honoris de Richmond. Houſehold-book of the fifth Earl of Northumberland. Spelman, Gloſſ. voc. Baro.

[M]. Book II. Chap. XII.

† Reg. Majeſt. lib. 1. cap. 4. LL. Malcol. II. cap. 9. 11. Craig, Jus Feudale, lib. 1. dieg 12. Du Cange, voc. Baro.

[N]. Book II. Chap. XIII.

‡ Selden, Titles of honour, part 2. ch. 5. Spelman, voc. Comites. Du Cange, voc. Comes.

[O]. Book II. Chap. XIV.

‖ One earl only, with the title *Palatine*, is mentioned in Scotland. This is Walterus Palatinus de Strathern, et Atholiae et Cathaniae Comes. *The works of Sir George Mac Kenzie, vol. 2. p. 542.*

the

the bounds of their eſtates. They could repledge or remove, from the king's courts, the ſuits of their vaſſals; and they might demand back, even from the juſticiary himſelf, all criminals who had fled from their authority. They had the high and the low juſtice. Offences within their territories were againſt their peace, and not againſt that of the ſovereign. Treaſon might be committed againſt them. They engroſſed, and without limitation, whatever referred to the civil, the criminal, and the military powers *. [P].

In the range of feudality, there were tenants of the crown, or *in capite*, who enjoyed knight-fees, and were neither earls nor barons. Theſe were conſiderable, in proportion to their poſſeſſions. To perform the military ſervice to which they were bound, they gave out *fees*; and theſe grants correſponded to the number of the ſoldiers or knights they were to furniſh. They had thus vaſſals, and, of conſequence, juriſdiction. They had a care over their manours. Their vaſſals or tenants repaired to their houſes or halls, received their orders, and conſtituted courts where their debts and diſputes were determined. Yet, if the judgments given in theſe judicatures were not ſatisfactory, the matter might be carried to the county-court, or might be ſubmitted to the king's juſtices in their circuits †.

This manerial juriſdiction was likewiſe exerciſed by the tenant who enjoyed fees from the nobility and the ſimple vaſſals *in capite*. When he had more fees than one, and he might poſſeſs many, he gave out portions of his eſtate to procure his number of knights. With his knights and tenants he ſat in judgment to determine their affairs. And from his court the parties in litigation might complain to his ſuperior lord; and from his ſuperior lord, a plea was competent to the king or his judges ‡. [Q].

In the ſplitting down of juriſdiction, even the poſſeſſor of a ſingle fee, whether from the crown or a ſubject, claimed his court and his uſage. What is more ſur-

* Selden, Tit. hon. part 2. ch. 5. Spelman, Gloſſ. de Comite Palatino, p. 142. Du Cange, voc. Comites Palatini.
[P]. Book II. Chap. XV.

† Stat. Alex. II. cap. 3. Stat. 1. Rob. I. Praefat. Du Cange, Gloſſ. voc. Vaſſaticum, Vaſſalli. Brady, Gloſſ. to his tracts, voc. Libere tenentes.

‡ LL. Malcol. II. cap. 8. Spelman, Gloſſ. voc. Valvaſores. Craig, Jus Feudale, lib. 1. dieg. 10.
[Q]. Book II. Chap. XVI.

priſing, the diviſions of a fee, to an eighth part, were called *members* of the fee; and the poſſeſſors of each of theſe parts had manors and juriſdiction. And beyond the eight parts which were members of the fee, diviſions might multiply to the fortieth, the fiftieth, and the ſixtieth particle or fragment. The holders of theſe, however, poſſeſſed neither manours nor juriſdiction *. [R].

A regular ſubordination, as well in juſtice as in military command, was eſtabliſhed from the ſovereign to the meaneſt of the military tenants, to the loweſt ſoldier who ſerved in the ranks. Every thing flowed from the king; and every thing might flow back to him again. No caſe could happen, except in regalities, but might be ſubjected to his review, or to that of his judges. He caught every eye, and made the connection of feudality to extend to the moſt diſtant corner of his kingdom.

The genius of the feudal law, the paſſion for war, and the combined character of the commander and the judge, produced all theſe wonders. But this ſingular ſyſtem, while it carried along with it thoſe poiſonous qualities which deſtroyed it as a military inſtitution, was alſo to periſh as a ſcheme of juriſprudence.

SECTION III.

The Decline of the Feudal Juriſdiction. The Origin of the Sheriff. The Advancement of his Powers. The Humiliation of the Nobles in their Judicative Capacity. The Fall of Regalities. The Shock of inferior Judicatures. The Confuſions which thence ariſe. The King's Court is affected. Its Fall. The Riſe of regular Courts. The Privy Council. The Court of Seſſion. The Court of Juſticiary. The Court of Exchequer. The Deſtinies of the Seneſchal or High Steward, the Conſtable, and the Marſhal.

THE inſtitutions of the feudal law required, that the ſame cuſtoms and purſuits ſhould conſtantly prevail. They were ſuited to times which were ſimple and warlike, but could not exiſt under the influence of commerce and refinement. The reſtleſs genius of man courts new ſcenes of action and amuſement. The rude

* View of Society in Europe in its Progreſs from Rudeneſs to Refinement, book ii.

occupations

occupations of war cannot for ever allure. Its duties, its fatigues, its dangers, were to diſguſt the poſterity of thoſe whom they had conducted to renown. The ſoftneſs of peace, the varieties of civil life, were to come with their attractions. Trade and the arts were to be cultivated. New paſſions and propenſities were to exhibit ſociety under a different aſpect. That ſyſtem which governed ſo long, was to be aſſailed on every ſide: and its extenſiveneſs, its nice dependencies and connections, its regularity itſelf, which ſeemed to give the promiſe of a laſting duration, were to be fatal to it.

That love of enjoyment and eaſe, which induced the poſſeſſor of the fief to conſider his military ſervice as a burden, made him regret the civil duties to which he was bound by his grant. If he wiſhed to be no longer a ſoldier, he was ſtill more anxious to lay aſide the fatiguing formalities, and the endleſs embarraſſments of a judge. He was diſpoſed neither to lead his vaſſals to the field, nor to ſummon them to his court. A length of time, and the exertions of property, had ſo conſolidated in his mind his right to his eſtate, that he fancied he was entitled to it, without any ſervice or reſtriction. The claims of ſuperiority appeared to him a diſgrace; the obligations of vaſſalage, a ſervitude. The ſuperior, whom his fathers had acknowledged as a benefactor, he regarded as an invader and a tyrant.

The neceſſary abſence of the nobles from their eſtates, while engaged in war, or at the court of their ſovereign, had produced, in the earlieſt times, the expedient of electing an officer, who, on ſuch occaſions, might preſide in their territories. This officer was the *ſheriff*; a magiſtrate weak in his origin, and dependent on their power for his exiſtence. In ſtrict propriety, he was the ſubſtitute of the earl; but after the times of knight-ſervice, he was alſo to act for the baron; becauſe every barony was ſituated in ſome county or earldom. His juriſdiction and cognizance were thus over extenſive poſſeſſions: and, to ſecure his importance, he attended to the law as a ſcience, introduced diſtinctions into buſineſs, and loaded it with forms.

This officer was not to be always at the devotion, and in the appointment of the nobles. The ſovereign perceived the advantage to be derived from men, who, applying to affairs, became qualified to diſcharge them. Availing himſelf, therefore, of the indolence, the ne-

gleƈt, and the incapacity of the earls and barons, he was gradually to aſſume the power of nominating the ſheriff. His intereſt, and eſtates in particular counties, and his ſupereminent juriſdiƈtion in all, were titles upon which he might openly interfere. The nobility, diſguſted with buſineſs, and wanting foreſight, did not aƈt with concert. The crown became poſſeſſed of an inſtrument, which it might employ to their prejudice. [S].

The judicial ſuperiority enjoyed over an unlettered nobility, by men trained to, and praƈtiſed in juriſprudence, was immenſe. Their powers, of conſequence, grew to be exorbitant. They ſucceeded to the juriſdiƈtion of the earls and the barons, and judged in almoſt every caſe which could happen. The court of the county could not be conſtituted without them; and, as the rules of the feudal law required the nobles to pay preſence and ſuit in this court, they had the mortification to aſſiſt the officer, who had ſwallowed up their greatneſs *.

Beſide his judicial importance, the ſheriff had fiſcal powers. He lifted the king's rents in his counties, managed his tranſaƈtions in money, attended to tallages and taxes, and had the charge of the feudal incidents of the royal tenants. He was alſo to pay attention to the army and to the militia †.

In the tendency of the feudal ſyſtem to periſh, the prince found an incitement to his ambition. The advancement of the ſheriff, and the decline of the ordinary nobility, paved the way for the deſtruƈtion of regalities. The royal arm increaſed in ſtrength. But it did not venture to ſtrike one deadly blow at the root of thoſe high prerogatives, which had advanced ſo many ſubjeƈts into princes. Art, as well as courage, was employed to overthrow them. When a regality was to fall into the king's hand, it was to be accounted as royalty, and to be governed by the king's judges, while it continued in his cuſtody ‡. Steps more important were to follow. Regalities which came to the ſovereign, were to be fully and uniformly ſubjeƈted to the royalty. It was enaƈted, that no regality ſhould be granted, without the *delive-*

[S] Book II. Chap. XVIII.

* Balfour, Praƈtics, title, 'Of the Shireffis.' Skene, de verb. ſignif. voc. Schireff.

† Spelman, Gloſſ. voc. Vicecomes. Madox, Hiſt. of the Exchequer, vol. 1. p. 353. vol. 2. p. 103. 104.

‡ Stat. James II. parl. 1449, cap. 25.

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rance or authority of parliament *. It was ordained, that no lord of regality ſhould be able to interrupt the peace of the nation, by breaking out into war; and that, in ſituations of this kind, he ſhould be a criminal, and obnoxious to the laws †.

The agitated condition of the great vaſſals, communicated a ſhock to all inferior orders. A ſmall innovation, upon a ſyſtem where the ſubordinations are long and regular, is capable of producing a laſting diſorder. Alterations, violent and momentous, were to act with a proportioned efficacy. Every part of the vaſt machine of feudality was to be moved and ſhaken. Juriſdiction interfered with juriſdiction. Judges were repledging from judges. Struggles in the midſt of confuſion were adding to it. Connections were broken down; and enmities were engendered. Alienations of feudal property, and the rigorous exaction of the perquiſites of tenure, communicated their proportion of diſquiet, and augmented the general calamity. The long range of ſuperiors and vaſſals, was filled with ſuſpicions, and thrown into contention. Their rights, their privileges, and their properties, ſeemed all to be at hazard. And, amidſt their diſguſts, their fears, and their diſaffection, they did not know what to acquire, or what to defend.

A moſt intimate connection had taken place between the ſovereign and the ſheriff. He was alſo to poſſeſs, at all times, great authority with the officers of the crown, or his judges. Yet, the part they were to act, was not the conſequence of a project which had been framed in the cloſet, and premeditated with anxiety. For the king's court, the natural ſupport of his greatneſs, was itſelf to ſuffer.

The *Aula Regis*, or the court of the king, was conſtituted upon a feudal model. The chancellor, the juſticier, the chamberlain, the ſeneſchal, the conſtable, and the mareſhal, held fair poſſeſſions from him, as tenants *in capite*, and were bound in the ſtrict ties of feudal obligation. In matters of ſtate they were his prime counſellors. In affairs of the people they were judges. Placed in this ſingular ſituation, the convulſions now experienced were to operate upon them with violence. As barons, their intereſts were oppoſite to thoſe of the

* Stat. James II. parl. 1455, cap. 43.
† Stat. James II. parl. 1457, cap. 72.

ſovereign.

ſovereign. As officers of the crown, they were to know no party but his. As judges, they were bound to impartiality, and to be without paſſions, like the laws. The prince could not continue to them his confidence, without danger; and they could maintain no favour with the people, whoſe reaſons of diſtruſt were ſtill more powerful.

A ſituation was come, when it was difficult for them to act with prudence, and impoſſible with honour. The emergency of the times overcame them. The King's court fell to the ground, and diſcovered its grandeur in its ruins.

But, though the king was deprived of his court, it was not proper that he ſhould want officers, with whom to conſult and to deliberate. He ſelected, accordingly, a body of men, who were to meet in his palace, and in whom he might confide. It was not a qualification of ſuch men, that they were connected with the crown in a feudal alliance. The mere will of the ſovereign was ſufficient to their conſtitution. His commiſſion or nomination gave them an exiſtence, which he might terminate at his pleaſure. The board of *Privy-council* was thus founded. Hence the diſtinction of 'officers of the 'crown,' and 'officers of the ſtate;' the former appellation having a reſpect to the members of the *Aula Regis*; the latter to the courtiers who ſucceeded them.

The board of privy council, however, which was to arrive at great eminence, and to be loſt in the privy council of Great-Britain, was not the only juriſdiction which aroſe out of the king's court. It was to give a beginning to all the higher judicatures of the nation. And, as the bent and direction, from the ſpirit of feudality to that of commerce, had taken place, the forms they were to aſſume, and in which they were to ſettle, could boaſt an utility and a value, which they might never have attained, if they had been eſtabliſhed all at once, and by one act, on the plans and ſuggeſtions of civil wiſdom.

Among the officers of the *Aula Regis*, the *Chancellor* had riſen to the higheſt dignity. Thoſe general concerns, therefore, which had been competent to the king's court, were entruſted to him in conjunction with a committee of perſons appointed by the ſovereign from the eſtates of parliament. This juriſdiction obtained the name of 'the ſeſſion;' becauſe it was to ſit

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in particular places during a regular time, at three periods in the year *.

To the powers and forms of this conſtitution, improvements were communicated by James II. †. But it was ſtill imperfect. The ſhortneſs of its ſeſſions ſerved to encourage the negligence of its judges, and gave riſe to a multitude of inconveniencies diſtracting to juſtice, and prejudicial to the ſubject. James III. accordingly, paid an attention to promote the utilities of this court ‡. And James IV. was to appoint another body of judges, and not out of the eſtates of parliament, who were to ſit continually in Edinburgh, or at whatever place might be agreeable to him. They had all the powers of 'the 'ſeſſion,' and were called 'Lords of the daily council.‖' But, adopting a model ſtill more complete, James the V. inſtituted 'the College of Juſtice,' of which the ſenators were called 'Lords of Council and Seſſion.' The powers of the ſeſſion, and thoſe of 'the daily council,' were veſted in this judicature. It was advanced to privileges ſtill higher and more ſplendid. A regularity was communicated to it; proper ſeſſions and modes of procedure were invented and commanded; and time made it to grow into the condition in which it exhibits itſelf at this hour §.

In the *Aula Regis*, the officer the moſt formidable was the great juſticier. When it fell, he was to loſe an immenſe proportion of his juriſdiction. All civil ſuits were gradually to go away from him [T]; and he was to judge only in criminal matters. [U]. The itinerant juſtices, who had been ſubordinate to him, were to be changed into eight deputies, who were to act under the authority of the ſovereign himſelf, or by the appointment of the juſticier, or juſtice-general ¶. Two deputies being to go to each quarter of the kingdom, the whole country was to enjoy the advantage of their cir-

* Stat. James I. parl. 1425, cap. 65.
This inſtitution is aſcribed to James I.; but, I am apt to think, that his act on the ſubject to which I have juſt referred, would have been more formal and explicit, if it had been meant as creative of 'the ſeſſion.' This court was probably of an older æra, and it might be the intention of his act to give a regularity to its meetings.

† Parl. 1457, cap. 61. 62. 63.

‡ Parl. 1469, cap. 27. Parl. 1475, cap. 63.

‖ Parl. 1503, cap. 58.

§ Parl. 1537, cap. 36—69. Parl. 1540, cap. 93.

[T]. Book II. Chap. XIX.

[U]. Book II. Chap. XX.

¶ Stat. James VI. parl. 1587, cap. 81.

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cuits. Theſe deputies did not continue in juriſdiction any longer than till the year ſixteen hundred and ſeventy-two *. Five Lords of Seſſion were then conjoined with the juſticier or juſtice-general, and with the juſtice-clerk; and in this form the juſtice-court, or the court of juſticiary, continues to ſubſiſt, though with greater order, and with added powers †.

The chamberlain, who had acted in the *Aula Regis*, and who had judged in all queſtions of revenue, was to be included in its fall. But his court, after ſuffering many alterations, was to be ſtationary in the court of exchequer as now eſtabliſhed ‡. The ſeneſchal or high ſteward was loſt as a real officer; and the title became inherent in, and peculiar to the eldeſt ſons of the Kings of Scotland ‖. And, in the decay of the feudal manners, and in the changes of the military diſcipline, the offices of the high conſtable and the mareſchal growing to be uſeleſs and unneceſſary, ſunk into hereditary and titular honours, and gave diſtinction to the families of Errol and Keith §.

Theſe were the fortunes of the *Aula Regis*. The diſorders of feudality, circumſtance, and the experience of calamity, much more than the ambition and the ſchemes of our monarchs, ſerved to direct, to rear up, and to confirm our political eſtabliſhments. Yet to the latter they are perpetually aſcribed. It is eaſy to talk of the great power and the deep projects of princes. It is more difficult to mark the ſlow operation of events, to ſeparate accident and wiſdom, and to behold ſociety and man in their progreſs.

* Car. II. parl. 1672, cap. 16.
† 6 Ann. cap. 6. 10 Ann. cap. 33. 20 George II. cap. 43.
‡ Stat. James V. parl. 1540, cap. 96. Car. II. parl. 1672, cap. 16. 6 Ann. cap. 26.
‖ Craig, Jus Feudale, lib. 1. dieg. 12.
§ The works of Sir George Mackenzie, vol. 2. p. 540.

CHAPTER

CHAPTER V.

The National Council. The mixed Form of Government. The Parliament of Scotland. The three Eſtates of the Realm. Barons by Tenure, by Writ, and by Patent. Earls by Tenure, and by Creation. The Peerage ceaſes to be territorial. Tenants in Capite by Knight-ſervice. The Origin of the Knights of the Shire. The Boroughs. Diſtinctions in the Hiſtory of Towns. Their Repreſentation. Enumeration of the Branches of the Legiſlature. The Lords of the Articles.

THE national council was more honourable than all other courts, and tranſcendent in its juriſdiction. No cauſes, no perſons, could confine it within bounds. The legiſlative authority of the ſtate was lodged in it by the conſtitution. It was compoſed of the King, the nobles, and the people, who acted as controuls to one another. The attention they applied to their peculiar rights communicated a harmony to the whole ſyſtem. Political liberty was the reſult of its action. [X].

This beautiful ſtructure was firſt thought of in the woods *. Among the antient Germans, ſays Tacitus, the king has no abſolute or unlimited dominion; the nobles having a direction in matters of ſmaller import; and thoſe of a general concern being the care of the people †. By the natural liberty of the barbarians, and the feudal inſtitutions, which grew out of their antient manners and their new ſituation in their ſettlements, the mixed form of government was engendered. Antiquity had not known this polity. Its poiſe and balance of powers were a ſecret till modern times; and it ſeemed to unite all the advantages of all the other modes of adminiſtration. It poſſeſſed the expedition of monarchies; for the prince was to execute. It poſſeſſed the freedom of democracies; for the people were a branch of the legiſlature. It poſſeſſed the firmneſs and vigour of the ariſtocratical forms; for the privileges and influence of the nobles guarded againſt popular caprice and tumult. It was valuable in its ſeparate capacities. It was more illuſtrious in their union.

[X]. Book II. Chap. XXI.

* Monteſquieu, liv. xi. ch. 6. Hiſtorical Diſſertation concerning the Antiquity of the Engliſh Conſtitution.

† Tacit. de Moribus Germanorum.

its conſtituent parts, conjoining into a body, were to make laws, and to ſecure, eſtabliſh, and maintain the tranquility of the individual, and the grandeur of the nation.

This civil conſtitution prevailed in Scotland, as well as in the other nations of Europe. In all of them, however, it was diſtinguiſhed by peculiarities. The great lines of reſemblance were to remain; but circumſtances of diſcrimination diſcovered themſelves in each, diverſifying the aſpect of its government, and giving a variety to its progreſſion.

The Scottiſh Sovereign came to parliament to preſide there, and to act with the three eſtates of the realm. The ſpiritual lords conſtituted the firſt eſtate; the temporal lords, and the tenants *in capite* were the ſecond; and the third conſiſted of the commons.

In the times of feudality, privileges were to follow the poſſeſſion of property. It was as holders of *baronies*, as well as heads of the church, that the biſhops were bound to attend in parliaments. It was as holders of *baronies* that the temporal lords aſſembled there. It was as holders of *fees* from the crown, that the tenants *in capite* made their appearance in them *.

Alterations, in the ſtate and ideas of feudal property, were, of conſequence, to create alterations in the condition of theſe aſſemblies. In the decline of the feudal ſyſtem, the diſorder which enervated and deſtroyed the military arrangements and the civil ſubordinations, was to operate with force on the high court of parliament.

* Hody, Hiſtory of Councils and Convocations, p. 126. Spelman, voc. Parlamentum. Selden, Titles of Honour, part ii. ch. v.

I know that the *barony*, and the *eſtate in capite*, were not originally the grounds of admiſſion to general councils. For general councils were known in the woods of Germany. It was in the courſe of time, and in the progreſs of fiefs, that they were to characteriſe thoſe claſſes of men who had poſſeſſed this privilege. At firſt they were deſcriptive of a character; and afterwards they came to be neceſſary and conſtituent parts of it.

With regard to the clergy, they, every where in Europe, ſucceeded to the rights of the prieſts of the conquering tribes; and one of theſe, as we learn from Tacitus, was an attendance in national aſſemblies. It was, therefore, as miniſters of religion, that they firſt voted in parliaments. It was after the times of the perpetuity of the fief that they appeared as *barons*. But what is remarkable, the biſhops were to ſit in the double capacity of *biſhops* and *barons*; and the abbots, who, of old, had voted as *ſuch*, were to ſit by the ſole title of their *tenures*, that is, *as barons*. Thoſe abbots who were not tenants *in capite*, did not ſit in parliament.

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All the duties and buſineſs connected with property, were conſidered as a burden and a diſgrace to it. At firſt regarded as honours, they had grown into oppreſſions. Men wiſhed to hold their eſtates with an entire freedom, and in an exemption from every care. The command from the ſuperior, which required his vaſſals to march to the field, was a humiliation to their pride. The acts of civil juſtice encroached upon their love of indolence and pleaſure. A faſhion prevailed to diſunite all privileges from territory.

In this ſituation the nobles were to ſuffer. The power they had exerciſed in their counties and baronies, had been communicated to the ſheriffs and King's judges. The juriſdiction they exerted in parliament, in conſequence of their poſſeſſions and tenures, was alſo invaded. For the cauſes which were efficacious in the one caſe, were to operate in the other. A coldneſs in performing their parliamentary concerns, was to retard the deliberations and the buſineſs of the national councils. They were often to abſent themſelves from the regular meetings of parliament. This neglect was to be puniſhed by fines*; and princes in diſguſt were frequently to with-hold all notification to them of its extraordinary conventions. The ſame confuſions, which had diſturbed inferior juriſdictions, were to diſfigure the high court of parliament. A ſimilar remedy was to be applied to them; and a freſh wound was to enfeeble and to cruſh the uſages and the ſpirit of feudality.

It appeared that privileges and offices had a more natural connection with the perſons and blood of the holders, than with their eſtates and tenures. The *barons*, indeed, *by tenure*, could not be aboliſhed and ſet aſide as an order of men. But the Sovereign, that he might provide for the execution of affairs, and to ſupport his own greatneſs, was to call to parliament many nobles, by particular mandates; and to require, in this form, the attendance of other tenants in chief, whoſe abilities deſerved the diſtinction. The right of ſitting by tenure was gradually to be forgot; and *barons by writ* had thus a beginning. When a writ, however, called to the great council a perſon who was not a baron by tenure, the nobility was not conferred, unleſs he was actually to aſſiſt as a Peer. A method of creation into the peerage, more compleat and deciſive, was, of conſequence,

* Prynne, Parliamentary Writs, part iv. p. 578. 588. 589.

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to follow this invention. *Letters-patent* were thought of, and conveyed a peerage to the heirs of the receiver, though he was never to take his ſeat *.

The dignity of the earl, like that of the barons, was alſo to undergo alterations. It was to be diſunited altogether from land and office. It eſcaped out of the ſyſtem of fiefs; and, yielding to the more cultivated maxims of refining times, became titular and patrimonial.

Thus, the peerage was to advance from being territorial to be perſonal. It was ſeparated from tenure and land, from military ſervice, and feudal juriſdiction. It was confined to its proper and peculiar purpoſes, and acquired that ſtability, without which no inſtitution can approach to perfection. The union of diſtinct employments, in one claſs of men, which is unavoidable in rude times, was infringed. Diviſions were made in buſineſs and affairs. And ſociety was to aſſume that ſimplicity which is the reſult of intelligence.

Theſe changes, like thoſe in the inferior courts, were of the higheſt importance; and, while they added to the influence of the ſovereign, they were alſo to promote the liberty of the ſubject, and the greatneſs of the ſtate. [Y].

But, while the condition of the nobility underwent variations, the ſtate of the tenants *in capite* could not but ſubmit to innovation. Theſe tenants might poſſeſs any number of fees whatever; and all of them, down to the poſſeſſor of *a ſingle fee*, might advance in perſon to the parliament. But this diſtinction did not extend to the proprietors of the *fractions* of the royal fee. [Z].

There was thus an order of men between the nobles and the people, whoſe privileges, eſtates, and number, rendered them reſpectable and powerful. From their inferiority to the nobles, and in conſequence of the advantage they yet poſſeſſed, in common with them, of attending in the great councils of the nation, they obtained the appellation of *the leſſer barons*. (AA).

The tenants *in capite*, or *the leſſer barons*, felt ſtrongly the inconveniencies of tenure; and they wiſhed, not leſs anxiouſly than *the greater barons*, to poſſeſs their eſtates

* Whitelocke, Notes upon the king's writ for chooſing members of parliament, ch. 32. 41. Selden. Tit. hon. part ii. ch. v. Blackſtone, Commentaries, book i.

[Y]. Book II. Chap. XXII.
[Z]. Book II. Chap. XXIII.
[AA]. Book II. Chap. XXIV.

without

without reſtriction or ſervice. Beſide the indolence, the vanity, and the paſſions which influenced them in common with theſe, they were oppreſſed in the growing luxuries of ſociety. The fees or eſtates they enjoyed, did not correſpond with the dignity of their rank as legiſlators. And, amidſt all the duties to which they were bound, they were to account their attendance in parliament the moſt burdenſome.

In the mean while, they were increaſing in numbers. Coheirſhip and partitions divided large eſtates into ſmall ones. The ſovereign, from a principle of policy, as well as from motives of favour, was to admit the alienations of territories. Baronies, and honours, and lordſhips, were to be broken down, and to go in parcels to a train of proprietors.

Improvements are ſlow, and take not effect till the evils they ſuppreſs are inſupportable. The diſguſts of a duty, which was expenſive beyond the meaſure of their wealth, the difficulties attending the convention of men averſe from buſineſs, and unacquainted with it, and the tumult and diſtraction inſeparable from a motley multitude, did not immediately produce any ſtatute to adjuſt the condition of the tenants *in capite*; and, with a due conſideration of their rights, to with-hold them from advancing in perſon to the parliament. They continued to aſſemble with more or leſs punctuality, till the reign of James I. This illuſtrious prince, whoſe views were deep and liberal, iſſued an ordinance, which permitted them to withdraw their perſonal attendance in parliament, and authoriſed them to appear there by a repreſentation. Every county was to ſend two or more commiſſioners, in proportion to its extent. And ſuch was the origin of *the knights of the ſhire*, or of the *repreſentatives* of the tenants *in capite*. [BB].

I am now to ſpeak of the *burgeſſes*; and it will ſurpriſe many readers, when I affirm, that they were the true and the antient *commons* of the kingdom. It has been uſual, indeed, to repreſent the boroughs as in a ſtate of uniform and entire wretchedneſs and miſery, from the earlieſt times till the eſtabliſhment of communities and corporations in the twelfth and thirteen centuries. But though no concluſion in the hiſtory of the European kingdoms has been inſiſted upon with greater vehemence, there is none which is more untenable.

[BB]. Book II. Chap. XXV.

The feudal inſtitutions were founded in freedom, and had freedom for their object. The connections of ſuperior and vaſſal in their origin, and during a long period of time, were tender and affectionate. They acknowledged the ſame intereſts, and were animated by the ſame paſſions. Their cordiality was extreme; and the incidents of tenure, forming a train of mutual offices and reciprocal attentions, foſtered and prolonged their intercourſe.

In this condition of affairs, the individual and the ſubject were fortunate and happy. The vaſſals of a ſuperior conſtituted his ſtrength and importance. They added to his magnificence in the ſeaſons of peace. They were his power in the ſeaſons of hoſtility. And he ſecured and maintained their attachment by kindneſſes and liberality.

But when the cuſtoms, and uſages, and ſituation which had given exiſtence to the feudal inſtitutions, were decayed and altered, the inſtitutions themſelves were aſſailed with violence. Selfiſhneſs and commercial ideas could not accord with the generous principles of the Gothic and the Celtic manners. In a ſituation which was not fitted for the feudal aſſociation, it was to be agitated in an unhappy direction. The ſpirit of cordiality which bound together the greater and the lower ranks of men, died away. The ſuperior was to conſider the poſſeſſions of the vaſſal as depredations from his domain. The vaſſal was to be diſguſted with the pride and the claims of the ſuperior. The incidents of tenure, which had promoted happineſs and friendſhip, were to become ſources of grievance and oppreſſion. A general diſſatisfaction pervaded all the orders of the ſtate; and ſociety, which before had been tranquil and ſecure, was now deformed with frauds, ſuſpicions and cruelty *.

In this melancholy condition of manners, the inhabitants of the towns and boroughs were to languiſh under oppreſſion. The ſovereign and the nobles, with whom they were connected in a feudal dependence, treated them with a deſtructive rigour. Tallages, in a variety of forms, were impoſed upon them. The privileges they had poſſeſſed were uſurped in a great meaſure, and inſolently held out to them as objects which they might purchaſe. Fines and compenſations were extorted for

* This diſtinction in the hiſtory of the feudal aſſociation I have treated at large in another work. See A View of Society in Europe in its Progreſs from Rudeneſs to Refinement, book iii.

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any new rights and advantages that attracted their attention. Methods of vexation, and claims of tribute or impoſt, were multiplied. Their liberty and happineſs were converted into abjectneſs and dependency [C C].

The ſpirit of refinement and commerce, which, by corrupting the purity of the antient manners, had produced this ſtate of wretchedneſs, was to compenſate for it. The boroughs and towns which it had reduced to be low and abject, were to be lifted by it to greatneſs They ſignalized themſelves by their manufactures and trade. They increaſed in riches. Princes perceived all the advantages to be derived from induſtry, and encouraged it. Cities obtained their infranchiſement from favour, or with money. Charters of corporation and community became frequent. The indolent grandeur of the feudal times gave way to the fermentation and activity of buſineſs. Commerce opened its ſources of wealth, and the towns were exalted to their ſtate of greateſt ſplendour.

Theſe diſtinctions characteriſe the hiſtory of towns, and may be employed to contradict the ſtrong aſſirmations of the writers for prerogative. While it is conceived that the towns were in ſlavery from their origin till the age of charters of community, it is inferred, that they could not be repreſented till this period. On the foundation of a ſuppoſition, which, inſtead of being ſupported by hiſtory, is contradicted by it, a fanciful and confident concluſion has been made. It was the breaking down of the feudal ſyſtem by the growing influence of property and commercial ideas, that ſubjected the towns to oppreſſions. But, long before theſe oppreſſions were exerciſed, they had enjoyed the full freedom of the ſyſtem. [D D].

In the firſt period of the hiſtory of towns, they were repreſented in parliament, and were proud of this privilege. In the ſecond period of their hiſtory, they continued to be entitled to this greatneſs; but, in ſome inſtances, finding it to be burdenſome, neglected or renounced it. In the third or laſt period of their hiſtory, it was to be aſcertained with preciſion, and courted with anxiety.

Thus the ſpirit of fiefs points to, and illuſtrates the propriety and the antiquity of the repreſentation of the towns. But while it ſuits the train of thinking em-

[CC]. Book II. Chap. XXVI. [DD]. Book II. Chap. XXVII.

ployed in theſe papers to give a peculiar force to this reaſoning, it may be proper to confirm it by other arguments and facts; and this buſineſs will be the ſubject of a particular article or illuſtration. It will appear that hiſtory offers its teſtimony to the ſame purpoſe; and that the laws of our nation have included the boroughs in their deſcription of the conſtituent parts of our parliament. Theſe evidences have ſeparately a weight that is reſpectable and powerful. When taken in connection, and put together, they are not to be reſiſted. They mark out and peculiarize the *burgeſſes* as the true and the antient *commons* of the kingdom. (E E).

From this detail, it is to be concluded, that the national council or the parliament was to conſiſt, in very antient times, of the ſovereign, the nobles, the tenants *in capite*, or the leſſer barons, and the burgeſſes; and that, from the age of James I. it was compoſed of the ſovereign, the nobles, the knights of the ſhire, and the burgeſſes.

In this laſt condition, the commons were in their higheſt rank of political greatneſs. And the increaſing wealth which was to flow to the people from the commerce of land, and the advantages of trade, could not but add to their importance. The wants of the ſovereign and of government multiplying with riches and luxury, ſerved, at the ſame time, to augment the attention which was paid to them. They were conſequential from their natural, their inherent, and their acquired privileges; and they were courted for the ſupplies they could furniſh.

Till the Union of the two Kingdoms, the commons of Scotland continued to meet in the ſame houſe with the ſovereign and the nobility. They never aſſembled by themſelves; and it is perhaps to the want of this diſtinction which they might neglect from pride and pertinacity, and to the more limited commerce of their nation, that, though they were conſiderable and eminent, they never attained that elevation and grandeur which have diſtinguiſhed and immortalized the commons of England.

In connection with our parliaments, there grew up 'the Lords of the Articles;' an inſtitution which has exerciſed the prejudices, rather than the candour of our

[EE]. Book II. Chap. XXVIII.

hiſtorians

hiſtorians. This council does not go back to an earlier age than that of David II. It was a committee of the three eſtates, and prepared matters for the diſcuſſion and remark of the parliament. No motive of adding to the royal authority had contributed to its riſe; for each eſtate was intereſted in the election of its own repreſentatives in this council. The public emolument, and the diſpatch of buſineſs, were its real and productive cauſes. It continued, accordingly, to conſult the national liberties and honour, till a late æra in our hiſtory. It was not till the tyrannical and inſolent domination of Charles I. that the freedom of its election by the eſtates was invaded. It was not till this period that its original purity was tainted; and that it condeſcended to be a treacherous inſtrument to circumvent the conſtitution, and to betray and to oppreſs the people.

In this melancholy and diſgraceful condition, the lords of the articles were not, and could not be permitted to exiſt long. The convention of eſtates declared them at the Revolution to be a grievance; and King William aboliſhed for ever their powers and authority *. [F F].

* Acts of the meeting of the eſtates, an. 1689, cap. 18. Acts of K. Will. and Mary, an. 1690, cap. 3.

[F F]. Book II. Chap. XXIX.

CHAPTER VI.

The Union of the Crowns of England and Scotland. Its Political Conſequences. The Decline of Liberty in the Scottiſh Conſtitution. The Spirit of Government till the Revolution. The Advantages of the Revolution. The Union of the two Kingdoms. The Britiſh Conſtitution. The Heritable Juriſdictions. The Abolition of Fiefs.

WHILE the feudal inſtitutions were haſtening to extinction, the Scottiſh princes were advanced to the throne of England, and the two crowns were united. But, amidſt the general and important advantages produced by this coalition, there was a neceſſary mixture of misfortune. The joy of the Scots in giving a King to England, was repreſſed by the change of the ſeat of government. The bond which had connected all the orders of men was not deſtroyed, but it was no longer palpable to vulgar apprehenſion. It ſeemed that

the ſovereign had confined himſelf to another land; and that the nobility had followed him to court preferment, and to diſplay their conſequence. The people, unencouraged by the ſplendours of a court, and unaſſiſted by the expences of the nobles, were ſunk in langour and in ſadneſs.

By the Union of the two crowns, the ſovereign acquired acceſſions of grandeur, and ſources of influence, which enabled him to overturn and to deface that beautiful fabric of polity which had hitherto prevailed in Scotland. The poiſe of the conſtitution was, in a great meaſure, deſtroyed in conſequence of the added wealth and greatneſs of the prince. The nobility were not able to maintain their dignity and independence. They could not oppoſe the crown with any proſpect of maintaining it within its proper boundaries. The power and favour of the ſovereign were to hold out to them every thing they could wiſh or deſire. The ſyſtem of fiefs was languiſhing under an incurable diſtemper. The people were without ſpirit.

New and great objects of care employed James VI. He was abſent from Scotland He had a natural indolence and indeciſion. A remarkable neglect of its affairs was accordingly to characteriſe his reign, from the period that he mounted the Engliſh throne. His immediate ſucceſſors were more ignorant of its ſtate and concerns, and more averſe from conferring upon it any laſting emolument or utility.

Charles I. who had piety without political ſincerity, an affectation of juſtice, with a contempt of the inherent rights of humanity, and an ambition which could not be pleaſed, but by overturning the freedom of our government, was to produce and to foſter the calamities of civil war. But the tranſactions of his reign, while they polluted ſociety with blood, were to illuſtrate the principles of liberty. When the man in the maſk ſtruck the fatal blow, and held out to an aſtoniſhed nation the head of their prince, it is difficult to ſay, whether the greatneſs of the event was more terrible, or more inſtructive. While their ſtraining conceptions took in the idea of their own importance, they were to know the condition and the buſineſs of a king. The tide, which for ſome time had run towards deſpotiſm, found a bank to ſtop its progreſs. The haughtineſs of the prerogative was humbled before the majeſty of the people.

Charles II. was not ſufficiently inſtructed by the ſufferings and the fate of his predeceſſor. His own misfortunes, and thoſe of his family, had ſunk deeply into his heart, and gave encouragement to the tyranny of his nature. A principle of revenge mingled itſelf with the prejudices of his education; and during his whole reign he is to be regarded as an enemy to the nation which he governed. Scotland was to feel every thing that is moſt unjuſt and humiliating. The uſe and dignity of parliaments were deſpiſed and ſuperſeded. They loſt their independence. The lords of the articles were the proſtitutes of the court. A commiſſioner and council were to exerciſe the authority of government, and to inſult and terrify the people. The ſources of public law were corrupted. The ſenators of the college of juſtice were the flatterers and the creatures of the miniſtry; and, acting in the double capacity of judges and jury, the property of the nation was at their diſpoſal *.

But while the ſpirit and forms of the ancient government were invaded, and while the civil rights of the people were objects of mockery, the freedom of religious principle was alſo attacked. The moſt retired and private ſentiments of men were to ſuffer violation. Every art was employed to divide the proteſtant intereſt, and to give countenance and encouragement to popery. A tyranny, extenſive as well as cruel, was about to ſtrike deeply its roots into the ſoil, to lift up its head, and to threaten defiance.

The obſtinate bigotry of James VII. awakened and rouzed into action the indignation and the valour of his ſubjects. The Prince of Orange opened his mind to ambition. A deep ſenſe of civil and religious liberty, of which the value had been fully unfolded amidſt ſcenes of rigour and injuſtice, pervaded every order of the ſtate. The Revolution gave a beginning to a happier train of events.

By 'the claim of right,' and 'the offer of their crown 'to King William and Queen Mary,' the people of Scotland were to recover their conſtitution. The independency of parliament was reſtored; the integrity of juſtice was reſpected; the freedom of the reformed religion was ſupported. Men finding a ſecurity and protection in their perſons, their eſtates, and their opinions, advanced in refinement and civility. They were forward to culti-

* Acts of the Eſtates of Scotland, an. 1689, cap. 13.

vate the arts, to extend their commerce, and to enjoy the happineſs of their condition *

But the Revolution, with all its advantages, was not calculated to ſecure a permanent proſperity to Scotland. The immenſe addition of power, which had been given to the ſovereign by the Union of the two crowns, rendered him ſuperior both to the nobles and the people. It communicated an influence, which might be employed efficaciouſly for the purpoſes of oppreſſion. For it was to be met and encountered with no proper check or controul. The nation muſt have yielded entirely to the royal prerogative, or have riſen in arms to vindicate its independence. If it ſtooped to a tyrant, it was to ſuffer every thing that is moſt abject; and, if it fought to try its ſtrength in the field, it might acquire a temporary renown, but had the certain proſpect of being overpowered by a ſuperior force, and of being reduced to be a province of England. An event of ſignal utility counteracted the dangers of its ſituation. This event was the Union of the two kingdoms.

It is not my preſent province, and I ſtay not to inquire into the cauſes of the moſt important tranſaction in the hiſtory of Scotland. Its effect was an immediate communication of the political privileges and ſecurities of England. An inſeparable connection was formed between the two kingdoms. Scotland was to experience and to augment the happineſs, the glory, and the ſtability of England. They were to be conſtant companions in proſperity and misfortune. And when England is to periſh like Carthage, Sparta, and Rome, its ſiſter nation will prolong the ſtruggle, hold the fortunes of the victor in ſuſpenſe, and exert, in extinction and death, that elevation of character, and that diſdain of a maſter, which diſtinguiſh and ennoble the revolutions of her hiſtory.

The Union of the two kingdoms, into which the Engliſh entered with ſo much facility, and the Scots with ſo much reluctance, was yet of infinitely higher advantage to the latter than to the former. It conferred upon the Scots nearly an eleventh ſhare of the legiſlature; and they were to bear leſs than the fortieth part of the public taxes †.

Sixteen peers were to repreſent, in the parliament of Great Britain, the body of the Scottiſh nobles. They

* Acts of the Eſtates of Scotland, an. 1689, cap. 13. and 18.

† Act of the Union, art. 9.

were

were to be elected by the free and independent voice of this body; and, while ſixteen of its number were to obtain a diſtinction ſo eminent, the order itſelf was, in every other reſpect, to be entitled to the privilege of the Britiſh peerage. The people or commons of Scotland were to be repreſented by forty-five members. Its counties were to elect thirty of theſe; and fifteen were to be ſent by the royal boroughs *.

But while this weight of repreſentation was to guard and to defend the Scottiſh nation, it was to be upheld and ſecured more effectually by that balance of powers in the conſtitution of Great Britain at large, of which the object is the promotion and ſupport of political order and liberty. Scotland has much to hope from its own repreſentation; but, if I judge rightly, it may confide more ſecurely in the democracy of England.

The ſuperiority of the Scottiſh ſovereign over the other branches of the Scottiſh government, created by the Union of the two crowns, was corrected at the Union of the two kingdoms. The importance which the ſyſtem of fiefs ſerved to continue down to the Scottiſh nobles, was reduced within limits which were to correſpond with the advancing ſpirit of commerce. Their right of acting and voting individually in parliament, the moſt illuſtrious of all the diſtinctions they had ever poſſeſſed, was taken from them, and committed to repreſentatives. By what the nobility were contented to ſuffer and to loſe, the people were to gain. And the beſt intereſts of freedom, and juſtice, and trade, were conſulted, eſtabliſhed, and maintained.

There was yet, notwithſtanding theſe improvements, a ſource of miſery and oppreſſion in the government of Scotland. While the feudal inſtitutions were labouring under diſeaſe, and the powers in connection with land were giving way to regular courts, the *heritable juriſdictions* could not be affected, in the natural progreſſion of events, and were neceſſarily to remain. The act of the Union of the two kingdoms reſerved them, accordingly, to their holders, as rights of property †.

The dignity of the national courts, and their utility, were alike wounded by the partiality and the weakneſs of tribunals, in which private men were to judge and to act. It was infinitely diſgraceful, that, at this late hour,

* Act of the Union, art. 22. 23. † Art. 20.

any

any offices of juſtice ſhould go in ſucceſſion as an inheritance, with no reference to the talents and the inclinations of the holders; and that theſe, as diſpoſed or moved by indolence, incapacity, or avarice, might let out and delegate the exerciſe of their powers. When private men were to give that protection which ought to flow from the government, the ſtate was to exhibit a feebleneſs and imperfection. While the people perceived not, with uniformity, the hand of adminiſtration in the favours which were to excite their gratitude, and in the puniſhments which were to teach them to reform, the union, as well as the affection which ought to prevail between the ſovereign and the ſubject, was invaded. And it leads us to conceive, in a very ſtriking degree, the obſtacles which were oppoſed to the Union, when we reflect, that the ſtateſmen who directed that great tranſaction, did not dare to apply a remedy to abuſes ſo wanton and ſo calamitous.

It was not till the reign of George II. that theſe grievances, and this diſgrace, were to diſappear. The *heritable juriſdictions* being reſerved as a property, it was remarked, that their holders might part with them for an equivalent. One hundred and fifty thouſand pounds bought back to the nation the juſtice which had paſſed away from it. The proprietors retired into the ſtation of ſimple individuals; and the ſupreme courts were to poſſeſs unimpaired thoſe powers, and that dignity and independence, which a great nation had a title to beſtow upon them, and which their pride and honour are intereſted to ſuſtain †.

The time was now come which was to terminate forever the career of the feudal inſtitutions. The venerable oak which had expanded its branches ſo widely, and carried its aſpiring ſummit to the ſkies, was to be ſtripped of all its honours, and bowed down to the earth. When the *heritable juriſdictions* were taken away, a particular act was alſo finally to aboliſh the *tenure* of all lands by *ward-holding* or *knight-ſervice*, and its train of *incidents* or *caſualties* †. This memorable law was to depoſit in its grave the ſkeleton of that prodigious ſyſtem, which had riſen to ſo great a height, which had endured for ſo many ages, and which had known ſo much glory and miſchance, ſo much ſtability and confuſion.

* 20 Geo. II. cap. 43. † 20 Geo. II. cap. 50.

OBSER-

OBSERVATIONS

CONCERNING THE

PUBLIC LAW,

AND THE

CONSTITUTIONAL HISTORY

OF

SCOTLAND.

BOOK II.

CHAPTER I*.

Opinions concerning the Introduction of the Feudal Law into Scotland.

A Compilation of ſtatutes, entitled *Leges Malcolmi*, and ſuppoſed to contain the laws of Malcolm II. is the foundation upon which the notion is built, that this prince introduced the feudal cuſtoms into Scotland. That this code, however, does not belong to Malcolm II, is affirmed by Sir Henry Spelman ‖. He refers it to Malcolm III.; and my Lord Kaims has adopted his conjecture †.

In this collection, it is ſaid, in expreſs terms, that 'King Malcolm diſtributed all the territory of Scotland 'to his vaſſals, and reſerved nothing to himſelf but the 'royal dignity, and the Mute-hill ‡ of Scone.' It is added, that, in return for this generoſity, and for the ſupport of the kingly dignity, his nobles granted to him the *ward* and *relief* of the heir of each baron.

Theſe tranſactions have a ſingular aſpect. Before Malcolm II. or Malcolm III. could diſtribute all the ter-

* See Book I. p. 8.

‖ Treatiſe of Feuds and Tenures, ch. 14.

† Eſſays concerning Britiſh Antiquities, Eſſ. 1.

‡ The Court-hill, or the Mount where courts were held, and controverſies determined.

ritory

ritory of Scotland, it was neceſſary that they ſhould be inveſted in it; and, at a period when it is held, that the feudal ſyſtem was unknown, this idea could not be conceived. Theſe laws which gave away all Scotland, intimate the great maxim of feudality which ſuppoſes the ſovereign to be the proprietor of all the landed property of the kingdom. They expreſs, in plain language, the exiſtence of fiefs; and yet they are appealed to as introductory of the beneficiary or the feudal law *.

It is alſo to be obſerved, that, if a liberality ſo weak and ſo profuſe had diſtinguiſhed Malcolm II. to whom theſe laws are uſually imputed by our hiſtorians, or Malcolm III. to whom they are given by Sir Henry Spelman and my Lord Kaims, the fact muſt have appeared in the cleareſt manner from the conſequent poverty of the crown. But of grants of crown-lands in poſterior times, there is a profuſion of evidence.

Thus no concluſion is, with any propriety, to be drawn on this ſubject from theſe laws. And it ought to be remembered, that their authority, in general, is ſuſpicious, and not to be implicitly relied upon, when unſupported by other monuments of hiſtory †.

But the bold game of giving away the crown-lands, in which my Lord Kaims engages Malcolm III. who might, on this foundation, eſtabliſh the ſyſtem of tenures, is not even to be defended, though the reaſoning now employed, and that in the former book, were without force. 'This meaſure, the moſt politic, and of the greateſt 'forecaſt that ever was contrived ‡,' does not accord with the character of Malcolm III. This prince was no politician. He had courage and proweſs; and his diſputes with William the Norman, and with William Rufus, encouraged his high and independent ſpirit. But hiſtory does not preſerve any traces of his legiſlative wiſdom. He was a ſoldier, and his reign is full of

* The words which deſcribe this tranſaction are as follows.

1. Dominus Rex Malcolmus dedit et diſtribuit totam terram regni Scotiae, hominibus ſuis.

2. Et nihil ſibi retinuit in proprietate, niſi regiam dignitatem, et Montem Placiti, in villa de Scona.

3. Et ibi omnes *barones* conceſſerunt ſibi *wardam*, et *relevium*, de haerede cujuſcunque baronis defuncti, ad ſuſtentationem Domini Regis. *LL. Malcolmi*, cap. 1.

I have ſometimes thought, that the compiler of theſe regulations meant to allude to the eſtabliſhment of *knight-ſervice*, and not to the *introduction* of the feudal law.

† Lord Hailes, Inquiry into the Authenticity of Leges Malcolmi.

‡ Eſſays on Britiſh Antiquities, Eſſay 1.

military

military buſineſs; but of all civil knowledge he was moſt profoundly ignorant.

It is urged, indeed, by his lordſhip, as illuſtrative of this poſition, that Malcolm III. when he eſtabliſhed the feudal law in Scotland, was influenced by the conduct of William the Norman, who, it is ſaid, had introduced it into England. But, while it is highly improbable, that Malcolm III. ever paid any attention to this project, it is utterly incredible, even on the ſuppoſition of his having done ſo, and of his having poſſeſſed the greateſt talents, that he ſhould have been able to atchieve the taſk of the introduction of fiefs into Scotland. On the hypotheſis, that feudality was altogether unknown till the reign of Malcolm III. and was then, for the firſt time, to be introduced, it is to be conceived, that the animoſity of the Scots to the Engliſh could not admit of this adoption of laws, any more than the violent and peculiar nature of the laws themſelves *. And amidſt difficulties ſo inſurmountable, it is to be remarked, that William the Norman, whom Malcolm III. was to imitate, did not, in fact, introduce the feudal ſyſtem into England. It had prevailed in the Anglo-Saxon times; and there are inſtances of feudal grants, which were hereditary and in perpetuity, before his acceſſion to the throne of the Confeſſor †.

* My lord Kaims inſiſts ſtrongly on the general notion, that the Scottiſh laws and cuſtoms were all borrowed from England. He has this ſtrange paſſage. 'When one dives into the antiquities of this iſland, it 'will appear, that we borrowed all our laws and cuſtoms from the Eng'liſh. No ſooner is a ſtatute enacted in England, but, upon the firſt 'opportunity, it is introduced into Scotland; and, accordingly, our 'oldeſt ſtatutes are mere copies of theirs. Let the *Magna Charta* be put 'into the hands of any Scotſman, ignorant of its hiſtory, and he will 'have no doubt that he is reading a collection of Scots ſtatutes or regu'lations.' *Eſſays on Britiſh Antiquities, Eſſ.* 1.

Theſe are bold and looſe aſſertions; and, I conceive, they ought not, by any means, to have been hazarded. In the legiſlation of all the European kingdoms, there was a natural and a neceſſary reſemblance; and this appears, in a ſtriking degree, from a compariſon of their ordinations and laws. The *Magna Charta* has many particulars, which refer to the feudal law and the feudal manners; and this law and theſe manners prevailed in Scotland. But they prevailed alſo in other kingdoms; and, upon the ſame evidence, it might have been inferred by his Lordſhip, that France, and Spain, and Germany, were indebted to England for their laws and ſtatutes.

† View of Society in Europe, in its Progreſs from Rudeneſs to Refinement, book ii. ch. ii. and the Notes.

CHAP.

CHAPTER II*.

The Perpetuity of the Fief. Knight-ſervice. The Knight's Fee.

THE charter of Malcolm IV. which confirmed his office to Walter the Steward of Scotland, and renewed the grant of lands conferred on him by David I. and which inveſted him in other poſſeſſions, is ſtill extant. The following words of it deſerve attention. 'Volo ut idem Walterus, et haeredes ſui teneant, in 'capite omnia praenominata, tam illa, quae ipſe habuit 'ex donatione Regis David, quam illa, quae habuit ex 'mea donatione; reddendo mihi et haeredibus meis, de 'illo FEODO, *ſervitium quinque militum* †.'

Theſe words are a proof that hereditary fiefs were familiar in Scotland in the reign of Malcolm IV. And what is more intereſting, from the terms *ſervitium quinque militum*, they evince the uſage of *knight-ſervice* in this age. They may even be conſidered as an authority, that hereditary fiefs, and the tenure of knight-ſervice, were known in the times of David I. And they point, of conſequence, to a ſtill earlier period for the extenſion of the feudal ſyſtem over Scotland, in the enlarged condition of the perpetuity of the fief.

I am thus led to conceive, that knight-ſervice might be fully eſtabliſhed in the reign of Malcolm III. And this improvement aroſe, doubtleſs, out of the natural variations of the ſyſtem. The grant under homage, and in perpetuity, of the county of Cumberland, by king Edmund, to Malcolm I. gives a peculiar ſtrength to this opinion; and it is to be reconciled with the genius of fiefs, their progreſs, and the ſpirit of hiſtory; all of which are wounded, when Malcolm III. is conſidered as the founder of the feudal law in Scotland.

In the collections of Mr. Anderſon, there is a grant to Walter the Steward of Scotland by Malcolm IV. which gives him lands under the ſervice of *one* knight ‡. But, in the charter I have juſt now mentioned, the lands ſpecified in this deed are conveyed with the exception of one manour. Other poſſeſſions alſo, and the hereditary

* See Book I. p. 11.

† Public Papers, No. 1.

‡ Diplomata et Numiſmata Scotiae, tab. 23.

office

office of the ſeneſchal or ſteward, are granted, and the ſervice of *five* knights is demanded.

From the circumſtance that the office of the ſeneſchal was hereditary in the age of David I. an additional weight is given to the argument, that fiefs in perpetuity were generally known, during a conſiderable time before this reign. For lands muſt have been hereditary before offices were made ſo.

The grant of the office of ſeneſchal, by Malcolm IV. is in theſe words: 'Notum ſit omnibus, quod, priuſquam arma ſuſcepi, conceſſi, et hac mea carta confirmavi *haereditarie*, Waltero filio Allani Dapifero meo, et heredibus ſuis, in feodo et hereditate, ſeneſchalliam meam, tenendam ſibi et haeredibus ſuis, de me et haeredibus meis, ita bene et plenarie, ſicut *Rex David* ſeneſchalliam ſuam ei dedit et conceſſit.'

It may, I imagine, be inferred from this evidence, that the office of ſteward was hereditary in the days of David I*. And thus I am diſpoſed to conclude, that the feudal cuſtoms had ſo far ripened in this period, as to be fit for being reduced into a ſyſtem or digeſt. It is, accordingly, a popular, and perhaps a well founded opinion, that the *Regiam Majeſtatem*, or the books of the majeſty, were compiled by the order of this prince.

Beſide the charters of Malcolm IV. which evince poſitively the exiſtence and uſe of knight-ſervice in Scotland, and to which I have already appealed, there is another deed of his, which gives a direct teſtimony to the ſame purpoſe. It is a charter, granting the lands of Roſſive and Dundaf, to Radulf Frebern, to be holden 'per ſervitium *unius militis*†.'

On the ſubject of the extent or value of the knight's fee in Scotland, I have met no information. 'We had 'no certain rule,' ſays my Lord Bankton, 'for the value 'or extent of a knight's fee; but in England, it was 'lands to the value of twenty pounds ſterling yearly, in 'William the Conqueror's time, which, at preſent, 'would amount to more than a rent of five hundred 'pounds ſterling ‡.'

* In Spain, the dignity of Dapifer or Steward was hereditary before the year 1030. Marca Hiſpanica, lib. 3. cap. v.

† Anderſon, Diplom. Scot. tab. 25.

‡ Inſtitute of the Laws of Scotland, vol. ii. p. 427.

It is inaccurate to talk of money ſterling in the days of the Conqueror; and, I believe, there is no evidence, that, in his reign, the knight's fee was ſo high as a twenty pound land.

The

The value of the knight's fee was, it is to be thought, equally uncertain in every feudal kingdom. It had, in general, a reference to the revenue which might maintain a ſoldier, and provide him with arms; but it varied, according to the cuſtoms of particular places, and to the generoſity, the whims, and the avarice of proprietors. Engliſh records, of undoubted authority, furniſh frequent examples of the military fee, as conſiſting of twelve carucates of land. And there are other ſpecifications of fees, at ſix, nine, fourteen, fifteen, ſeventeen, twenty-ſeven, and thirty-ſix carucates ‖. A carucate was a meaſure of land, which extended to about one hundred acres.

‖ Obſervationes in Regiſtrum Honoris de Richmond, p. 243.

CHAPTER III*.

A Diſtinction concerning Allodiality, and its Subjection to Military Service.

SIR Thomas Craig, who is always inſtructive when he deſcribes the feudal cuſtoms of his own times, is ſeldom ſo when he goes back into hiſtory. He has yet expreſſed the diſtinction, that an allodial eſtate might conſiſt of *moveables*, as well as of *land*. 'Allodii duo 'ſunt genera; alterum in *rebus mobilibus* conſiſtit; alte-'rum in *rebus ſoli* †.'

He does not, however, remark the military ſervice which was performed by ſuch proprietors. But this is evident from the following laws.

'Statutum eſt, quod quilibet homo aetatis inter ſex-'decim et ſexaginta annos jurabit, et aſſedabitur ad 'arma, ſecundum quantitatem *terrarum ſuarum, et ca-'tallorum.*

'Videlicet, homo habens *quindecim libras terrae*, vel 'quadraginta marcas in catallis, habeat equum, haber-'geon, capitium de ferro, enſem, et cultellum, qui 'dicitur *dagger* ‡'.

* See Book I. p. 12.
† Jus Feudale, lib. 1. dieg. 9.
‡ Stat. Wilhelmi, cap. 23. 1. et 2.

'Dominus

'Dominus Rex vult, quod quilibet homo, habens 'valorem unius vaccae in *bonis*, habeat unum arcum, cum 'una garba ſagittarum, ſcilicet, viginti quatuor ſagittas, 'vel unam bonam lanceam †.'

In the ſtatutes alſo of James I. ‖, James II. §, James V. *, and in a variety of other laws, the military ſervice of allodial proprietors, both of land and moveables, is fully expreſſed, and pointedly commanded.

It ſeems, that the condition of allodiality continued longer in Scotland than in other nations; and that its converſions into tenure were leſs frequent. The forms of this converſion are no where to be found; and the conſtitutional effects of this peculiarity may have been important. But, amidſt the fabulous fecundity of our hiſtorians, there are no materials for the illuſtration of this topic.

† Prima Statuta Roberti Primi, cap. 27. l. 4.
‖ Parl. 1429, cap. 120.
§ Parl. 1456, cap. 57.
* Parl. 1540, cap. 87.

CHAPTER IV.*

The Introduction of Fire-Arms into Scotland.

IT is probable that James I. who was educated in England, was acquainted with fire-arms. Edward III. had employed them at the battle of Creſſy; and, ſome years previous to that event, they were known in France †.

In the reign of James II. there is a ſtatute, which ſhews, that guns were beginning then to be uſed by the Scots in the field. The words of the legiſlature, which I ſubjoin, are remarkable on different accounts, and have been omitted in the common editions of the ſtatute-book.

'It is thocht ſpeidfull, that the king mak requeiſt to 'certane of the greit burrowis of the land, that ar of 'ony mycht, to mak cartis of weir, and, in ilk cart, 'twa gunnis, and ilk ane to have twa chalmers ‡,

* See Book I. p. 14.
† An. 1338. Daniel, Hiſt. de la Milice Françoiſe, liv. 6.
‡ Two cavities or chambers at the bottom of the barrels.

'with the remanent of the graith, that efferis thairto, 'and ane cunnand man to ſchute thame. And gif they 'have no craft in the ſchuting of thame, as now, they 'may leir, or the tyme cum that will be needful to 'thame ‡.'

At the battle of Flowden, in the time of James IV. it is ſaid, that there were ſeven culverings, of the like ſize and make, which were called the *Seven Siſters* ‖.

The invention of fire-arms approached ſlowly to perfection; and it is curious to obſerve, from the ſtatute, their aukward ſtate, when extended over Scotland by James V. It was not poſſible, in thoſe times, to predict their future efficacy, or to foreſee that battles were to be leſs bloody, and more terrible; and that contending ſtates, advancing nearer to equality by the means of this military artifice, a ſtability unknown before was to be given to kingdoms, and a period put to thoſe deſtructive and deſolating revolutions, which mark the conqueſts of the ancient world.

In the act of James V. while it is highly important in itſelf, there is a beautiful ſimplicity, that is finely deſcriptive of the times. Among its other injunctions, it ordains, that the guns or artillery furniſhed by the clergy, according to their temporal lands, were to 'remaine at the caſtell, abbay, or manſion of the biſhoppe, 'prelate, or kirkman, to be keiped there and left to his 'ſucceſſoure, quha ſall bee halden to uphald the ſamin, 'for the defenſe of the realme.' And it concludes with enacting, 'that ladies of conjunct-fee and liferent, ſall 'furniſh effeirand to the quantity of their living, for 'ſupport of the barronnes and uthers landed-men in the 'furniſhing of the ſaid artaillarie §.'

‡ Black Acts, fol. 38. an. 1456.
‖ Drummond, Hiſtory of the Jameſes, p. 77. § Ann. 1540.

CHAPTER V.*

The Scots Guards, and the Scots Gendarmes.

THE firſt ſtanding army in Europe was formed in France, by Charles VII. in the year 1445; and it deſerves to be remembered, that the company of Scots

* See Book I. p. 18.

guards,

guards, and the company of Scots gendarmes, owed their inſtitution to this prince. The knowledge of a ſtanding force muſt, of conſequence, have been known familiarly to the Scots in early times.

It happened, from the antient intercourſe between France and Scotland, that the natives of the latter kingdom had often diſtinguiſhed themſelves in the ſervice of the former. On this foundation, theſe companies were inſtituted; and their fates cannot but be intereſting to Scotſmen.

The *Scots guards* were called the king's archers, becauſe they attended his perſon, and becauſe they were armed with bows and arrows. Their firſt commander, who is recorded as a perſon of great valour and military accompliſhments, was Robert Patillock, a native of Dundee. This company was kept up in times of peace as well as of war; and, being ardent to diſtinguiſh itſelf, continued in great reputation till the year 1578. From that period, the Scots guards were leſs attended to, and their privileges came to be invaded. In the year 1612, they remonſtrated to Louis XIII. on the ſubject of the injuſtice they had ſuffered, and ſet before him the ſervices they had rendered to the crown of France. Attempts were made to re-eſtabliſh them on their ancient foundation; but no negotiation for this purpoſe was effectual. The troops of France were jealous of their honours. The death of Francis II. and the return of Mary to Scotland, at a time when they had much to hope, were unfortunate circumſtances to them. The change of religion in Scotland, and the ſanctified inſolence of the Scots reformers, were blows ſtill more ſevere. And the acceſſion of James VI. to the throne of England diſunited altogether the intereſts of France and Scotland. The Scots guards of France have now, therefore, no connection with Scotland but the name *.

The company of *Scots gendarmes* were alſo originally a part of the guard of Charles VII. and in this ſtation they acted under other princes. It was their prerogative to take precedence of all the companies of the gendarmerie of France; and, on particular occaſions, they even preceded the two companies of the king's *mouſquetaires*. The ſons of the Scottiſh monarchs were the uſual captains of this company; and, after Mary's ac-

* Daniel, Hiſt de la Milice Françoiſe, liv. 10. Abercromby, Martial Atchievments, vol. ii. p. 287.

ceſſion to the throne, its command belonged to them as a right. It was from thence that James VI. made a claim of it for his ſon prince Henry. This honour, and its emoluments, were alſo enjoyed by Charles I. and the next in command to this prince was Louis Stuart duke of Lennox. George Gordon, marquis of Huntley, ſucceeded the duke of Lennox in the year 1624, and took the title of captain or commander in chief when Charles I. mounted the Engliſh throne. It is not certain whether Charles II. was ever captain of this company; but it was conferred on his brother the duke of York, who choſe rather to live and to die a ſaint, than to ſupport the grandeur of his anceſtors, or to periſh, like a king, under the ruins of his throne. This pious and unfortunate man was captain of the Scots gendarmes till the year 1667, when he reſigned his commiſſion into the hands of the French king. Since that time, no native of Great Britain has enjoyed this command *.

* Daniel, Hiſt. de la Milice Françoiſe, liv. 10.

CHAPTER VI. ||

The Idea that the Princes of Scotland were indigent.

AN author of elegant talents, and of great induſtry, but who is no where profound, has inculcated the poverty of the Scottiſh kings in ſtrong and coarſe language. After the times of the perpetuity of the fief, he conſiders the demeſnes of the crown, with the feudal caſualties, and the aid, on extraordinary occaſions, termed a *benevolence*, as a full enumeration of the royal riches; and he ſubjoins this remarkable concluſion: 'All theſe added together, produced a revenue, ſcanty 'and precarious, which, far from enabling the king to 'attempt any thing that could excite the *jealouſy* or *fear* 'of the *nobles*, kept him in *continual indigence*, *anxiety*, '*and dependence* †.'

|| See Book I. p. 22.

† Dr. Robertſon, Hiſtory of Scotland, vol. i. p. 15. edit. 1773.

What is ſurprizing, this author has yet aſſerted, that, from the times of Robert Bruce, the Scottiſh kings were uniformly engaged in ſchemes to overthrow the influence of the nobles; and he has actually employed himſelf to detail ſtruggles between the regal and the ariſtocratical powers. Hiſt. of Scotland, vol. 1. p. 38—64. See farther Chap. VII.

This

This deſcription he gives as characteriſtic of the feudal ſovereigns, not only in Scotland, but in every other country of Europe. That it cannot apply to Scotland, is evident from what has been obſerved in the former book; and it is equally inapplicable to any other nation.

Nor even from his own enumeration of the property of the feudal princes, though it is widely imperfect, the concluſion he draws is not to be admitted. For the king's demeſnes, and the feudal perquiſites were branches of revenue which were extenſive and ample.

Of the king's demeſnes at a given time, it is difficult, perhaps impoſſible, to ſpeak with preciſe knowledge. But, from the peculiar attention with which they were guarded in Scotland, it is to be concluded, that its princes, inſtead of being perpetually in 'indigence, 'anxiety, and dependence,' were at no period in that ſituation.

An idea of the profits of the feudal caſualties may be formed from the wealth they preſented to the princes of England. Simon de Monfort gave to Henry III. for the wardſhip and marriage of Gilbert de Unfranville, the ſum of ten thouſand marks, which, according to the value of our preſent money, was equivalent to a payment of one hundred thouſand pounds. And Geoffrey de Mandeville gave to the ſame prince twenty thouſand marks, that he might have the *marriage* of Iſabell counteſs of Glouceſter, with all her lands and knight-fees †. A multitude of examples of the ſale of the wardſhips and marriages of great vaſſals might be added to theſe; and, beſide the emoluments of *wardſhips* and *marriages*, enormous ſums were drawn from *reliefs*, *aids*, and *eſcheats*. Now, an inference to Scotland, from the prevalence of the ſame uſages and cuſtoms, will, I believe, be allowed, in a great meaſure, to be deciſive. The profits of feudality, therefore, did not permit the ſovereigns of Scotland to be in want and in dependence.

The immenſe revenues of the princes of France and England, and of thoſe of other countries, for a long period during the continuance of fiefs, oppoſe Dr Robertſon's notion, and create a ſuſpicion that it reſts on no foundation of real hiſtory or ſolid evidence. Indeed, no proof or evidence of any kind is appealed to. The ſurpriſing profits and the prodigious wealth of the Norman kings are treated by Mr. Hume at ſome length;

† Madox, Hiſt. of the Exchequer, vol. i. p. 326. 465.

and Mr. Madox has entered into details concerning them, which are moſt minute and ſatisfactory †.

To my general argument, the temporary wants of particular princes form no objection; and it is to be obſerved, that, when the feudal ſyſtem was deep in its decline, regular modes of taxation were invented and eſtabliſhed as foundations of revenue, both for the prince and the government.

While Dr. Robertſon, however, aſſerts the 'continual 'indigence, anxiety, and dependence,' of the Scottiſh ſovereigns, and of the feudal princes in general, he has affirmed, that, in the feudal ages, 'pomp and ſplendour 'were unknown, even in the palaces of kings;' and that 'it was not neceſſary that a king ſhould poſſeſs a 'great revenue ‡.' Now, it ſeems to me, that theſe obſervations include a violation of his own deſcription. For, with what propriety is poverty to be objected to our princes, when riches were of no uſe to them? After contradicting hiſtory, he contradicts himſelf.

But, waving any particular notice of this inattention, I will venture to make a large conceſſion to this writer. I will ſuppoſe, that he may apply, with propriety, to antient periods the ſtandard of his own age. Yet, with this advantage on his ſide, it will not follow that the greatneſs of the feudal ſovereigns was diminutive or little. In fact, the king's palace, and the *Aula Regis*, in the ages of which he ſpeaks, were ſplendid and pompous to an uncommon degree; and there is good reaſon to believe, that the grandeur of the feudal royalty was ſuch, as not only to bear a compariſon with the magnificence of the preſent times, but in many reſpects to exceed it ‖.

The evidence of the riches of the feudal princes, and the evidence of the ſplendour of their palaces, are to be found every where in antient books; and, while they mutually illuſtrate one another, they deſtroy altogether the humiliating and hypothetical tenet, that the Scottiſh princes were in miſery and in indigence.

† Hume, Append. II. Madox, Hiſt. of the Exchequer.
‡ Hiſt. of Scotland, vol. i. p. 14.
‖ See Book I. Chapter IV. ſect. 1.

CHAPTER

CHAPTER VII.*

The Meaning of Parliament in Reſumptions of Royal Property. The Notion that the Scottiſh Princes, from Robert Bruce to James V. had been engaged in particular Deſigns to depreſs the Authority of the Nobles.

THE act of James III. which annexes perpetually to the crown the earldom of March, the baronies of Dumbar and Colbrandſpeth, the caſtle of Dumbar, the tower and fortalice of Colbrandſpeth, the lordſhip of Annandail, the caſtle of Lochmaban, and all their dependencies, is concluded in this remarkable manner.

'Mair-over, to the effect that this preſent ſtatute may 'be the mair ſurely keiped and obſerved, it is ſtatute and 'ordained, that we ſall give our *bodiely aith* for the in-'violable obſervation of the ſamin: And that all and 'findrie our ſucceſſours, kings of Scotland, ſall be 'obliſhed to make the like *aith* in the time of their co-'ronation; in witneſſe of the quhilkis all and ſundrie 'premiſſes, our great ſeale, and the ſeales of the vene-'rable and reverend fathers in Chriſt, biſhoppes, ab-'bottes, priors, togider with the ſeales of our lovits, 'couſinges, earles, lordes, barronnes, freehalders, and 'commiſſioners of burrowes, are hereunto hung and 'appended †.'

This proof of the anxiety of parliaments about the royal revenue, is not ſingle and unſupported. The ſtatute-book abounds with a variety of examples to the ſame purpoſe; and to theſe I have appealed in my former book. In attending to them, it appeared to me, that the evident meaning of the reſumption of royal grants, was to ſupport the proper dignity of the crown, and to execute acts of ſtrict juſtice.

But an opinion having prevailed, that, from Robert Bruce to James V. the princes of Scotland had been uniformly engaged in deſigns to ſubvert the power of the nobles, it has been thought, that the ruin of the ariſtocracy might be intended by the frequent revocations which were made of the royal property.

* See Book I. p. 24. † Parl. 1487.

To the opinion, that theſe deſigns were real, Dr. Robertſon has ſubſcribed; and he is confident, in a particular manner, that Robert Bruce was actuated with a view of depreſſing the nobility, when he called on his vaſſals in parliament to produce the charters by which they held their poſſeſſions. I approve his attempt to illuſtrate a problematical point of our hiſtory; but I am not convinced by the ſenſe or tenor of his obſervations.

He expreſsly affirms, that king Robert's intention, in endeavouring to recall the crown-lands, which were poſſeſſed under improper titles, was 'to check the growing power and wealth of the nobles.' Yet the crown, in thoſe times, according to his own narrative, muſt have been neceſſitous. He makes *all* the barons, without exception, 'to ſtart up at once, and draw their 'ſwords,' in oppoſition to the meaſure of king Robert. Yet king Robert was a victorious, a high ſpirited, an able prince, and could not poſſibly be without ſome perſonal influence. In fine, he makes the reſentment of the nobility to this meaſure, 'as an attack upon their 'order,' to occaſion a conſpiracy. Yet it appears, that the attack was not intended againſt the order of the nobles, but againſt thoſe of the vaſſalage, who, during times of confuſion, had poſſeſſed themſelves unjuſtly of crown-lands; and perſons alone of this deſcription were intereſted to engage in a conſpiracy ‡.

It is alſo to be obſerved, that in this age a parliamentary inquiry was too artificial a method of humbling the nobility. The condemnation, too, of the conſpirators by the Black Parliament, is a demonſtrative evidence, that all the nobles were not offended with Robert, nor engaged in the conſpiracy; for, in this caſe, it was impoſſible that king Robert could have prevailed.

Theſe remarks, it is probable, may juſtify the account I have given of king Robert's revocation ‖. Similar views of doing juſtice to the crown directed the reſumptions of future princes. And, with reſpect to the particular deſigns of humbling the nobles, which Dr. Robertſon imputes, in ſucceſſion, to our monarchs, from Robert Bruce to James V. I muſt confeſs, that I can find no vouchers from which they are to be inferred in the moſt diſtant degree. The ſtatute-book contains

‡ Hiſtory of Scotland, vol. i. p. 39.
‖ Book I. p. 22.

repeated

repeated and conſiſtent evidence, from which it is to be gathered, that no ſuch deſigns could be formed. The impolitic and deſultory conduct of almoſt all the princes of the houſe of Stuart, contradict the notion. The anxious and perpetual attention of parliaments, to ſuppo t the royal wealth, contradict it. The nobles, who were ſo important a branch of the legiſlature, would not have given their conſent, and appended their ſeals to a multitude of acts of revocation of royal gifts, and of annexation of new property to the crown, if they had been ſenſible that their princes had been engaged in formal attempts to humble them.

In confirmation of the deſigns, aſcribed to our princes, of humbling the nobility, Dr. Robertſon has, indeed, appealed to the improvements which, in different reigns, took place in juriſdiction and courts *. But theſe improvements are not to be accounted for by ſtrong, or even cautious acts of royal wiſdom; and, while they ſerved to mortify the nobility, they were alſo to detract from the prerogatives of our princes. Their great effect was to advance the ſecurity and the liberties of the people; and their cauſes are to be traced, not in plots to ruin the nobles, but in the natural progreſſion of the ſyſtem of fiefs †.

It is true, at the ſame time, that the diſputes of our ſovereigns and their nobility were frequent and violent. But of theſe the reaſons are obvious, and the moſt common books of our hiſtory have aſſigned them. They generally aroſe out of the events of the times. They were not plans of a long and a uniform concert, but burſts of reſentment, of paſſion, and of revenge. To ſeek for ſubtle and inſidious motives of conduct, is, however, a common practice among hiſtorians; and the few critics who join philoſophy to taſte, have remarked this frailty as peculiar to thoſe among them, who have the feweſt opportunities of knowing mankind and the world. Narrators of this kind are never to make a proper allowance for the weight of preſent paſſions and preſent circumſtances, over actors in great ſcenes; and they perceive not, that, when they ſuſpect and refine the moſt, they are often to take the worſt meaſure of human affairs.

* Hiſt. of Scotland, vol. i. p. 35. 46.
† Book I. Chapter IV. ſect. 3.

CHAPTER

CHAPTER VIII.*

Poſſeſſions of the Scottiſh Kings in England. The Uſage of Corodies.

BESIDE the territory and lands enjoyed by the Scottiſh princes in their own kingdom, they had many fair poſſeſſions in England. But I ſuppoſe it is impracticable to enumerate them with preciſion. A few hints is all I can propoſe on this ſubject.

Concerning the claims and the property of our ſovereigns in Cumberland and Northumberland, there is much in our hiſtories; and it is probable, that, in very early times, they had alſo poſſeſſions in Yorkſhire. The ſheriff of this county, in the fourth year of Henry II. made the following return to the barons of exchequer. 'Willelmus de Sumervill debet XX marcas argenti. Sed 'manet in terra Regis Scotiae in *Loeneis* †.' This return being on the buſineſs of Yorkſhire, the terra mentioned in it, muſt have been ſituated there. In old writings, the *terra* of a proprietor was his *ſeigneurie* or *lordſhip*. The territory of *Loene* or *Lohene* appears then to have been a lordſhip of the king of Scots in Yorkſhire. From this circumſtance, which I mention incidentally as an illuſtration of the property of the Scottiſh princes in England, I will venture to hazard a conjecture.

William Rufus marched a powerful army againſt Scotland. Malcolm III. haſtened to oppoſe him. He *advanced with his forces out of Scotland into* LOTHENE *in* ENGLAND, *and there remained.* 'Theſe,' ſays my lord Hailes, 'are the words of the Saxon Chronicle, which 'have been, and probably ever will be, the ſubject of 'fruitleſs controverſy ‡.'

The territory of *Loene* or *Lohene*, and the *Lothene* in *England*, of the *Record* and the *Chronicle*, were I conceive the ſame place. It had belonged to the kings of Scotland in the age of Malcolm III. and to this territory he marched his army. I add, it was for this eſtate, and not for *Lothene*, or *Lothian* in *Scotland*, that Malcolm IV. acknowledged himſelf the vaſſal of Henry II.

* See Book I. p. 25.

† Mag. Rot. 4 Hen II. Rot. 5. a Everwichſcira, ap. Madox, Hiſt. of the Exchequer, vol. I. p. 3.

‡ Annals of Scotland, vol. I. p. 21.

In

In Northamptonſhire, there alſo belonged to the king of Scots, in the reign of Henry II. the towns and lands of Achelcy, Haringworth, Fodringhey, Boſiet, Bragefield, Pedington, Drahton, Berton, Herdewich, and Preſton Gileberti. This appears from records produced by Mr. Madox for the purpoſe of proving, that the lords of Engliſh feigneuries were occaſionally exempted from common amerciaments. And the king of Scots, as lord of the ſeigneuries juſt now mentioned, was not charged with the fines which had been ſet upon the hundreds, towns, and lordſhips of Northamptonſhire *.

In the counties of Cambridge and Huntingdon, and in Warwickſhire, the king of Scots, in the reign of Henry II. was likewiſe in poſſeſſion of the lands, towns, and ſeigneuries of Stiviclea, Paxton, and Adelakeſton. Different records, in the collections of Mr. Madox, evince theſe particulars †.

That the king of Scots had other poſſeſſions in England, is a matter of high probability. But where are we to ſearch for the evidence of them? From what has been noticed, however, I am induced to correct a miſtake, which is committed by my lord Lyttelton. His lordſhip, I believe, is ſeldom poſitive, but when he has a title to be ſo. He has yet aſſerted, that there were no fiefs in England poſſeſſed by the Scots, in the reign of Henry II. but in the three northern counties, and that, after the delivery of theſe counties to this prince, he had no liegemen or vaſſals of the Scottiſh nation, but the Scots inhabiting *Lothian* ‡. Now, the eſtates and territories which have been enumerated, have a reference to the age of Henry II. and they apply to counties different from thoſe to which his lordſhip has alluded.

When the Scottiſh princes were to appear in the Engliſh court, to expreſs their homage, and to add to the dignity of the kings of England, by feudal attendance, they were allowed a *corody* or penſion for their expences. This was a right, growing out of feudal manners, and muſt not be conſidered as an expreſſion of meanneſs or ſervitude.

* Madox, Hiſtory of the Exchequer, vol. I. p. 539, 540.

† Madox, Hiſt. of the Exchequer, vol. i. p. 539, 540.

‡ Hiſt. of Henry II. vol. ii. p. 483. Edit. 1769.

His lordſhip, it is to be obſerved, is of opinion, that it was the *Lothian* in Scotland, which was the fief held from Henry II. A learned antiquary has examined this opinion at great length. *Remarks on the Hiſtory of Scotland, ch.* ii.

It

It is natural to think, that, from the reign of Malcolm I. theſe corodies or penſions were in uſe. For, beſide the military ſervice to be performed by him for Cumberland, he was to attend the kings of England in all ſolemn feſtivals; and, for this end, houſes of reception on the road were aſſigned to him *.

When king Stephen, in the firſt year of his reign, celebrated the feſtival of Eaſter, he held a council. At this council, among his tenants *in capite*, was Henry the ſon of David I. He was here, it is to be imagined, as *Princeps Cumbriae*, or perhaps for the honour of Huntingdon. In this council king Stephen granted to Rodbert the biſhoprick of Bathe; and, to this charter †, Henry was a witneſs. That a corody was allowed upon this occaſion is highly probable.

In the fifth year of Stephen, however, it appears, that a penſion was actually enjoyed by the kings of Scotland; and the evidence of this corody does not deſcribe it as a new inſtitution. Bertram de Bulemer had allowance, at this time, upon his account as ſheriff of Yorkſhire, for the corody of the Kings of Scotland, 'in coming to, 'and going from the king of England's court ‡.' In the third year of Henry II. the ſheriff of Devon was allowed Lxxii. l.xix s. and x d. for the corody of the king of Scotland, by the Chancellor, and the Earl of Leiceſter ‖. Thus, there is poſitive proof, that David I. and Malcolm IV. enjoyed corodies from England.

To William the Lion a corody was allowed by Richard I. It was granted by a charter which is yet extant, and which is to be highly valued, as expreſſive of the faſhion of theſe times §. And to Alexander III. a penſion of this ſort was granted by Henry III. ¶.

The

* Brompton, ap. Maitland, Hiſt. of Scotland, vol. i. p. 307.

† It was granted, 'audentibus et collaudantibus omnibus *fidelibus* 'Willelmo Archiepiſcopo Cantuarienſis—*Henrico filio regis Scotiæ*,' Madox, vol. i. 207.

‡ In corredio regis Scotiæ l. viii xvs. et iiiid. numero, veniendo ad curiam, et redeundo. Mag. Rot. 5. Steph. Rot. 3. a. Everwicſcira. Bertrannus de Bulemer Vicecomes. See Madox, vol. i. p. 364.

‖ Et in corredio Regis Scotiæ, Lxxiii. et xixs. et 1d. per Cancellarium et Comitem Legeceſtriae. Mag. Rot. 3. H. 2. Rot. 4. a. Lincolieſc. Jordanus de Bloſſevilla, *Sheriff.* ap. Madox, vol. i. p. 207.

§ Richardus Dei gratia Rex Angliae, dux Norm' Aquitan, Comes Andeg' archiepiſ' epiſ' abbatibus, comitibus, baronibus, juſticiariis, vicecom' ſeneſcal' prepoſitis ballivis, et omnibus miniſtris et fidelibus ſuis totius terre ſue, ſalutem. Noverit univerſitas veſtra nos conceſſiſſe, et preſenti charta noſtra confirmaſſe, Wilielmo illuſtri Regi Scotiæ, kariſſimo amico et conſanguineo et fideli noſtro, et heredibus ſuis in perpetuum

The uſage of corodies was common in all feudal countries; and it was not peculiar to princes. It was uſual in the different orders of ſuperiority and vaſſalage, and is to be conſidered as an expreſſion, not only of grandeur, but of affection ‖.

perpetuum, de nobis et heredibus noſtris, omnes libertates et rectitudines plenarie, quas anteceſſores ſui habere ſolebant, eundo ad curiam anteceſſorum noſtrorum, et ſtando ad curiam, et redeundo a curia anteceſſorum, noſtrorum: Scilicet, unaquaque die, poſtquam de mandato noſtro tranſierit fines regni ſui verſus curiam noſtram, centum ſolidos Sterlingorum, et in reditu ſuo a curia noſtra ſingulis diebus tantumdem, quouſque in terram ſuam venerit; et ſingulis diebus ex quo venerit ad curiam noſtram, uſque ad receſſum ſuum, verſus terram ſuam, triginti ſolidos Sterlingorum, et duodecem de dominicis (*a*) guaſtellis noſtris, et totidem de (*b*) ſemenel' noſtris dominicis, et duodecim ſextercia vini, quatuor, videlicet, de dominico vino noſtro unde nobis ſervitur; et duas petras cere, vel quatuor cereos, et quadraginta candelas de dominicis candelis unde nobis ſervitur, et duas libras piperis, et quatuor libras cinomomi; et preterea conductus quos anteceſſores ſui habere ſolebant, eundo uſque ad curiam noſtram, et redeundo a curia noſtra, ſcilicit, quod Epiſcopus Dunelmenſis et vicecom', et barones Northumbr' ad ipſum venient in finibus regni ſui, et ibi eum recipient et conducent uſque ad Teiſe, et ibi venient ad eum archiepiſcopus Eboracen' et vicecom' et barones Eborum', et ibi eum recipient et conducent uſque ad Epiſcopatum Lincoln', et ibi ad eum venient Epiſcopus Lincoln', et vicecomes et barones provincie, et eum recipient, et per balivas ſuas conducent; et ſic deinceps epiſcopi et vicecomites provinciarum, per quas ipſe tranſierit, quouſque ad curiam noſtram venerit. *Charta Richardi Primi Regis Angliæ*, ap. Calendars of Antient Charters, p. 347.

¶ Madox, vol. ii. p. 202.

‖ Du Cange, Gloſſ. voc. Conredium.

(*a*) Gateux, cakes or waſtels. (*b*) Simnels.

CHAPTER IX*.

Extents. Taxes.

THE Indenture between Robert I. and his ſubjects, is the deed or writing from which it is concluded, that the valuation called *the old extent*, was framed by Alexander III. To Robert I. a ſubſidy was given, and it was to be levied 'juxta *antiquam extentam* terrarum et 'redituum tempore bonæ memoriæ Domini Alexandri, 'Dei gratia, Regis Scottorum illuſtris ultimo defuncti †.' Theſe are the words which are the authority for the extent of Alexander III.

* See Book I. p. 30.

† This deed is printed at the end of this treatiſe, among other public papers.

It

It appears not from this evidence, that a valuation was *actually* made by Alexander III. A valuation or extent prior to his reign, but then in uſe, may be alluded to. Perhaps, too, the portion of time which paſſed from the reign of Alexander III. to that of Robert I. was not of ſuch a length, as that an act in the times of the former could be termed an *ancient* tranſaction in thoſe of the latter. Alexander came to the crown in the year 1249; he died in the year 1285; and the indenture by Robert and his ſubjects was executed in the year 1326. The difference of time between theſe princes cannot therefore be conſidered as conſtituting a period of antiquity.

But, laying aſide arguments which are only probable, it is to be remarked, that there is an explicit and clear proof of an extent, which muſt have been long prior to the days of Alexander. In a record, entitled, 'Rentale Regis Alexandri tertii vicecomitat. de Aberdene et de 'Banff,' there is this article: 'De thanagio de Nathdole, 'ſecundum ANTIQUAM *extentam*, xlix. lib. et xvi. 'denar.' This evidence, which preſſes againſt *the old extent* of Alexander III. was firſt ſubmitted to public obſervation by my lord Hailes *.

Valuations were common in all the feudal countries. And in England, a wide variety of *old* and *new extents* are to be produced †. For the condition of different times was conſtantly creating a neceſſity for different valuations ‡.

In England, the firſt tax which was known was *Danegeld*. It was a contribution in its origin for relieving England from the *Danes*. It was levied by an aſſeſſment on the *hides* of land; and this method being employed in future taxations, the term *hidage* came to expreſs any general aid that was taken up from the landed property of the kingdom. A *hidage* was uſually a taxation of 2s. per hide. But there are inſtances of hidages at 3s. 4s. 5s. and 6s. per hide. The hidage was extended over the *allodial* property as well as the eſtates which were *feudal*. And a hide of land was, in general, to conſiſt of 100 or 120 acres §.

* Annals of Scotland, vol. i. p. 184.

† Public Papers, No. II.

‡ Regiſtrum Honoris de Richmond, p. 64—69. Appendix, in Regiſt. p. 28—51.

§ Brady, Hiſt. of England, vol. i. p. 204. 270.

After

After the invention of knight-ſervice, the *ſcutage* was diſcovered, or the tax upon knight-fees. This tax was peculiar to the military tenants *. Thus, Henry II. in the third year of his reign, lifted a ſcutage or tax from his vaſſals at two marks for the knight's fee; and in the fourteenth year of his reign, he levied another ſcutage at one mark for the knight's fee †.

Carucage was of the ſame import with *hidage*; but, being a Normanic term, it was not in familiar uſe till the age of William the Norman ‡. A carue of land was equal to a hide; and carucage, as well as hidage, expreſſed a general taxation over the whole landed property of a ſtate. Thus, Richard I. in the year 1198, received an aid or tax of vs. from every *carue* or *hide* of land in England §.

In the times which preceded James I. theſe modes of taxation, it is to be thought, were known in Scotland. But, in the reign of this prince, the tax by the *pound-land* came into faſhion. And it was in this method that the ſubſidy from the proprietors of territory was raiſed to pay their proportion of his *coſtage* or expences while in England ‖.

* View of Society in Europe, in its Progreſs from Rudeneſs to Refinement, book ii. ch. v. and the notes.

† Brady, Hiſt. of England. vol. i. p. 416.

‡ Appendix to the Regiſter of Richmond, p. 10. Madox, vol. i. p. 729.

§ Ricardus Rex Angliæ accepit, de unaquaque *carurata* terræ ſive *hyda* totius Angliæ quinque ſolidos de auxilio. Hoveden, p. 778. ap. Rer. Anglican. Script.

‖ Black Acts, Parl. 1424, cap. 10, 11.

CHAPTER X‡.

The Leges Malcolmi.

IN the order or precedency of the officers of the crown, I have followed the 'Leges Malcolmi;' and upon their authority I have abſtained from conſidering the *High Admiral* as a branch of the *Aula Regis*.

A learned and acute treatiſe on the ſubject of theſe laws, has yet convinced me, that they are not a genuine capitulary of any Prince ‖. But, though they cannot be

‡ See Book I. p. 35.

‖ Inquiry into the Authenticity of the Leges Malcolmi.

conſidered with the reſpect that is due to ſtatutory law, and muſt be regarded as the work of a private, and even an ignorant compiler; they may, perhaps, be employed occaſionally to illuſtrate the manners of ancient times. And, in the preſent caſe, I could find no better rule of deciſion.

The officers of the crown were of a high antiquity. It is probable, however, that the names of ſome of them are only of the age of William the Norman. This, notwithſtanding, is no real difficulty. It is common, indeed, among antiquaries, to reaſon from the *name* to the *office*; and this ſource of miſtake has contributed, in a particular manner, to throw an obſcurity both on Engliſh and Scottiſh ſtory. But, though the æra of the Norman invaſion introduced a prodigious multitude of new terms and words, it is obſervable, that theſe, in a great meaſure, were to diſtinguiſh old and eſtabliſhed uſages.

I offer this remark to preclude a cenſure which may ſeem to affect ſeveral obſervations which I have made; or, rather, indeed, to ſhow that I am aware of this cenſure. For, there are ſome objections which mere antiquaries are invariably to advance; becauſe, being perfectly fitted to their underſtandings, they are never to perceive their impropriety.

CHAPTER XI.†

A Miſconception concerning the Juriſdiction of the Sovereign.

THE revenues of the king, ſays the hiſtoriographer of Scotland, 'were ſcanty; he had not a ſtanding 'army; and he enjoyed no *proper juriſdiction* ‡.' This picture is full, and very expreſſive. It is a pity that it ſhould convey a moſt imperfect likeneſs.

I have ſhown, that the revenues of the ſovereign muſt have been, not only conſiderable, but even ample; and it is obvious, that the military arrangements of Scotland

† See Book I. p. 35.
‡ Dr. Robertſon, Hiſt. of Scotland, vol. i. p. 14.

were

were exactly the ſame with thoſe in all the feudal nations. They were, therefore, of importance. A ſtanding army is a late invention; and to apply the want of it as a reproach to the Scottiſh ſovereign in the days of feudality, is to violate the laws of hiſtory, and to judge of him by the cuſtoms of the preſent age.

In connection with theſe tenets, it is not unnatural to find the notion, that the kings of Scotland, of old, had no *proper* or adequate juriſdiction. But I am ſurpriſed that the author ſhould appeal, for the ſupport of this opinion, to the very cauſe which deſtroys it. 'By the 'feudal ſyſtem,' he obſerves, 'the king's judicial autho-'rity was extremely circumſcribed *.' The reverſe of the concluſion is the truth.

It was a neceſſary conſequence of the feudal ſyſtem, that the vaſſals of the ſovereign were all in ſubordination to him. They had all their courts; but from theſe appeals were competent to him. Of their own diſputes he judged in the firſt inſtance, in the *Aula Regis*, to which they were ſuitors; and the decrees they pronounced among their tenants, might come there to be reviewed by appeal. He had thus not only a juriſdiction over the nobles, and the tenants *in capite*, but over the whole extent of the inferior vaſſalage †.

But while he had this exerciſe of juriſdiction, it is alſo to be remembered, that, in the king's court, or the *Aula Regis*, the members who chiefly aſſiſted him, were the 'officers of the crown,' who, in their ſeparate capacities, were the great diſpenſers of public juſtice ‡.

In fact, as the feudal ſyſtem had produced the endleſs claims, and the wide juriſdiction of the ſovereign, it was its decline which was to circumſcribe them. And the regular courts which were eſtabliſhed upon the fall of the *Aula Regis*, were to be a check to his powers, and to approximate to perfection the ends of government, and the liberties of the people §.

This attack, therefore, upon the ſufficiency of the juriſdiction of the ſovereign, appears in a very improper light; and I am ſenſible, that, in derogating from it, this author is ſolicitous to detract alſo from the 'officers

* Hiſt. of Scotland, vol. i. p. 16.
† Chapter IV. Sect. II.
‡ Chapter IV. Sect. I.
§ Chapter IV. Sect. III.

'of the crown.' For he affirms, that they 'received 'little ſalary beſides the fees and perquiſites of their 'office ‡;' and he holds them out by implication as unacquainted with ſplendour, and as ordinary perſons. Yet their greatneſs was overgrown *; and they belonged to the prime nobility, of whoſe power he every where ſpeaks in terms which are extravagant.

I am thus induced to ſuſpect, that this hiſtorian has not attended to the *Aula Regis*, and the 'officers of the 'crown,' any more than to the general ſpirit of the feudal ſyſtem itſelf. And I obſerve, that, in another performance of his, he ſeems to loſe ſight altogether of this court and theſe officers. For it is thence, I imagine, that he deſcribes the *Juſtiza* of Aragon as an officer only known to that country; and that he ventures to reaſon, and in a formal method, under the idea of this inſtitution as a *Peculiarity* †. Yet the *Juſtiza* or *Juſticia* of Aragon was an officer who was familiar to every feudal ſtate. Though his powers were to vary under different governments, he was every where a part of the *Aula Regis*. He was the *Juſticier* whom I mentioned in my former book. He made his appearance, not only in Aragon, but in Normandy, in Sicily, in France, in England, and in Scotland.

‡ Hiſtory of Scotland, vol. i. p. 14.'
' Chapter IV. Sect. I.
† Hiſt. Charles V. vol. i. p. 152. 339. 340. 341. 342.

CHAPTER XII *.

An Idea of Baronial Magnificence.

THE feudal nobility were exceedingly magnificent; and there is not a more curious monument of their ſtate and faſhion than 'the Regiſter of the Honour of 'Richmond.' The Earl of Richmond had immenſe poſſeſſions; and we may form a notion of his grandeur from the eſtabliſhment of his *Guard* for Richmond caſtle. There were in this eſtabliſhment eight places or offices; and they are deſcribed in this manner.

Placea Ranulphi filii Roberti in caſtro Richmundiae ad capellam S. Nicolai.

* See Book I. p. 36.

Placea

Placca conſtabularii in clauſtro turris.

Placea Briani filii Alani in magna Aula de Scoulande.

Placea Torphini filii Roberti de Manfeld, inter coquinam et bracinam.

Placea Ranulphi filii Henrici, ex parte occidentali de Scoulandhall.

Placea Conani filii Heliae, juxta clauſū turris ex parte orientali extra murū.

Placea Camerarii, ex parte orientali de Scoulandehall juxta furnum.

Placea Thomae de Burgo, ex parte occidentali majoris capellae ad canonicos in muris *.

To each of theſe places there was annexed a feudal eſtate to a conſiderable amount. Ranulph the ſon of Robert had ſix knight-fees. The conſtable in the Keep of the tower had ſix knight-fees, and a half of a knight's fee. Brian the ſon of Alan had four knight-fees, and a ſixth part of a knight's fee. Torphin the ſon of Robert of Manfeld had two knight-fees. Ranulph the ſon of Henry had three knight-fees, and a ſixth part. Conan the ſon of Helias had three knight-fees and a half. The chamberlain in the eaſt part of Scoulandehall had two fees and a half. And Thomas de Burgh had two knight-fees.

I call theſe eſtates conſiderable; becauſe there is reaſon to think that theſe *fees*, or the greateſt number of them, conſiſted each of twelve carucates of land †.

Few noblemen were ſo powerful as the Earl of Richmond, who poſſeſſed four hundred and forty lordſhips in different counties of England ‡. But all the nobles affected ſimilar forms of grandeur; and the leaſt, as well as the greateſt, gave out fees and eſtates, which they connected with offices and peculiarities of ſervice.

* Regiſtrum Honoris de Richmond, exhibens terrarum et villarum quae quondam fuerunt Edwini Comitis infra Richmundſhire deſcriptionem: Ex libro Domeſday in theſauraria Domini Regis. Fol. Lond. 1722.

† Regiſt. Hon. de Richmond, p. 26—36.

‡ Obſervat. in Regiſtrum, p. 237.

CHAPTER XIII*.

An imperfect Theory concerning the Riſe of the Juriſdiction of the Nobles. Thanes. Thane-land.

AFTER having treated the juriſdiction of the Sovereign, Dr. Robertſon deſcribes that of the nobles. He expreſſes himſelf in this manner.

'The barbarians, who over-ran Europe, having deſtroyed moſt of the great cities, and the countries 'which they ſeized being cantoned out among *powerful* '*barons*, who were blindly followed by numerous *vaſſals*, 'whom, in return, they were bound to protect from 'every injury; the adminiſtration of juſtice was greatly 'interrupted, and the execution of any legal ſentence 'became almoſt impracticable. Theft, rapine, murder, 'and diſorder of all kinds, prevailed in every kingdom 'of Europe, to a degree almoſt incredible, and ſcarce 'compatible with the exiſtence of civil ſociety. Every 'offender ſheltered himſelf under the protection of ſome 'powerful chieftain, who ſcreened him from the purſuits 'of juſtice. To apprehend and to puniſh a criminal, 'often required the union and effort of half a kingdom. 'In order to remedy theſe evils, many perſons of diſtinction were entruſted with the adminiſtration of 'juſtice within their own territories. But what we may 'preſume was, at firſt, only a temporary grant, or a 'perſonal privilege, the encroaching ſpirit of the nobles 'ſoon converted into a right, and rendered hereditary. 'The lands of ſome were erected into *Baronies*, thoſe of 'others into *Regalities*†.'

Here we have *barons* immediately after the conqueſts of the barbarians! Yet, a *baron* was a tenant *in capite*, by *knight-ſervice*. And, from the eſtabliſhment of the European ſtates, till the invention of *knight ſervice*, there paſſed many *centuries*. Theſe *barons*, too, had no *juriſdiction!* and yet they had *vaſſals!* And it was a conſequence of the murders and calamities promoted by them, that *baronies* and *regalities*, with *juriſdictions*, were erected! When Monteſquieu refutes the Abbè du Bos, he applies to him what the Egyptian prieſts ſaid to Solon, 'O Athenians! ye are mere children.'

* Sect. I. p. 36.

† Hiſt. of Scotland, vol. i. p. 17. 18.

It

It is perfectly obvious, that the chiefs of the barbarians had both civil and criminal juriſdiction in their woods *. They carried with them theſe powers into their conqueſts; and the feudal law, ariſing out of the ancient manners of their nations, and out of the new ſituations experienced by them, the chiefs were made to alter gradually their condition; and thoſe peculiarities and innovations commenced, which characteriſe the nobles of Europe under the empire of fiefs.

If mere diſorders and calamities could have produced the baronial and feudal juriſdictions, they muſt have appeared in every nation whatever. And, it is worthy of remark, that the juriſdictions of the nobles were, in reality, one of the moſt powerful ſources of the confuſions and tumults of the middle times.

In Scotland, as well as in England, the *Thanes* preceded the *Earls* and *Barons*. The Thanes were military tenants of the crown; but their eſtates were not divided into *fees*, and furniſhed no known or certain number of *Knights*. After earls and barons were known in Scotland, the Thanes died away; for thoſe who were poſſeſſed of *thane-land*, gave it to the crown, and took it back under the erection of earldoms and baronies.

But, though it is to be conceived, that the converſion of Thanes into earls and barons took place, to an extenſive degree, in England and Scotland, in the times of William the Norman, and of Malcolm III. yet it was not univerſal. For, in the former kingdom, there are records which evince their exiſtence in the reigns of Henry I. King Stephen, Henry II. Richard I. King John, and Henry III †. And, in Scotland, there are authentic charters, which prove, that there were thanes in the days of Alexander II. and down to the year fourteen hundred and ninety-two ‡.

* Tacit. de Moribus Germanorum.

† Midox, Hiſt. of the Exchequer, vol. i. p. 12. 130. 417. 659. 694. 698. 707.

‡ Lord Hailes, Annals of Scotland, vol. i. p. 27.

CHAPTER XIV*.

The ſuppoſed Pre-eminence of the Scottiſh Ariſtocracy.

THE political powers of the Scottiſh nobles, were conſequences of the ancient manners of the barbarians, and of the inſtitution of fiefs; and they varied with the fates of the feudal ſyſtem, and with the ſpirit of the feudal aſſociation. They were exactly the ſame with thoſe of the nobility, in all the other ſtates of Europe.

An opinion, however, has prevailed, that their greatneſs was more eminent; and it has been applied to almoſt every part of our ſtory, with a ſpirit of dogmatiſm, that ſeems to defy all inquiry. Yet, in fact, if this tenet cannot bear an examination, it muſt follow, that many writers have been buſy to involve our hiſtory in uncertainty and contradiction.

The lateſt, and the moſt confident advocate, for the uncommon and extraordinary power of the Scottiſh nobles, is Dr. Robertſon; and he has been careful to enumerate thoſe ſources of high influence, which are ſaid to have been *peculiar* to them.

I. In the nature of the country of Scotland, this hiſtorian has found one peculiar cauſe 'of the power and 'independence of the Scottiſh nobility †.' That a mountainous region is, in general, more favourable to liberty, than deſpotiſm, is a poſition which admits not of any doubt; and a noble concluſion might thence have been drawn to the rights of the people. But, according to the ſyſtem of this author, the people were in a ſtate of oppreſſion and ſlavery ‡; and his inference is only made with

* See Book I. p. 36.

† Hiſt. of Scotland, vol. i. p. 21.

‡ He obſerves, that 'the rights of the people were ſcarce ever mentioned, were diſregarded or unknown.' *Hiſt. of Scotland, vol. ii. p. 249.* And every where throughout his work, he is appealing to the opinion, with which he introduces it, 'that the genius of the feudal government 'was purely *Ariſtocratical.*' *Vol. i. p. 12.* With a ſtrong love of ſyſtem, he yet runs counter to it. For, the *abjectneſs* of the people, and the *exorbitant power* of the nobles, are tenets that cannot agree with one another. According to the nature of the feudal uſages, the ſtrength of the nobility muſt have reſted in their influence with their followers. The people, therefore, from whom the vaſſalage was formed, could not be in a ſtate of oppreſſion. The nobles would pay attention ſurely to the inſtruments of their power. This was a reſpect which they owed to themſelves,

with reſpect to the nobles. That the political advantages, however, of the nobles, received any addition from this cauſe, cannot be admitted. They might find an encouragement to faction, by retiring to fens, faſtneſſes, and mountains; but, if ſuch places were their own, they would not diſtreſs them by plunder or devaſtation; and the hue and cry of the neighbouring diſtricts collecting a defenſive force, would preſent a barrier to oppoſe their incurſions *. This, then, is to ſurvey, with an unſkilful eye, the turbulence of the nobles, and to miſtake it for power. It is not poſſible that a baron, when conſidered as a noble, could poſſeſs any extraordinary influence, becauſe the place of his reſidence was in a deſart, in a marſh, or on a mountain. And the intereſt communicated to him in this view, when conſidered as an enemy to his ſovereign or his country, was partial, and of little conſequence.

II. Another remarkable cauſe of the power of the Scottiſh nobility, it is ſaid, 'was the want of great cities 'in Scotland.' And the reaſon of the operation of this cauſe, is thus expreſſed. 'Wherever numbers of men 'aſſemble together, order muſt be eſtabliſhed, and a re'gular form of government inſtituted, the authority of 'the magiſtrate muſt be recognized, and his deciſions 'meet with prompt and full obedience †.'

It is certainly very true, that men cannot exiſt in great towns, without order and without government. But this maxim has a very feeble connection with the matter in diſpute. For, even on the ſuppoſition that Scotland had been filled with large cities, obedient to juſtice, it does not follow, that the vaſſals of the baron were to renounce their attachment to him. And, on the ſuppoſition that the towns of Scotland were few and inconſiderable, it does not follow, that the country was without law. In fact, it contained an infinite multitude of juriſdictions. Now, the baron, in either caſe, might command his vaſſals, or tenants; but he could do no more. And what was the baron and his tenants, when in competition with the ſtrength of the kingdom?

ſelves. But, while the author often abandons his general principle, it is to be obſerved, that it is in itſelf deficient in ſolidity. For the genius of the feudal ſyſtem was purely *Democratical*. See A View of Society in Europe, in its Progreſs from Rudeneſs to Refinement.

* Spelman, Gloſſ. voc. Hutefium. Du Cange, Hueſium. I.L. Robert I. cap. 21.

† Hiſt. of Scotland, vol. i. p. 22.

III. A third remarkable cauſe of the power of the nobility is diſcovered in 'the diviſion of the country into 'clans.' That men who had eſtates from a chief, and who were connected with him in blood, would fight for him with vigour, is a truth which is illuſtrated by the hiſtory of every nation of Europe. 'Againſt ſuch men,' it is urged, 'a king contended with great diſadvantage; 'and that cold ſervice which money purchaſes, or au-'thority extorts, was not an equal match for their ardour 'and zeal *.'

The connection alluded to was an immediate reſult of feudal manners, and muſt not be held out as peculiar to Scotland. At the ſame time, it is to be admitted, that clanſhips, in ſome parts of this kingdom, were connected more firmly than in other ſtates. But, though its fulleſt force is allowed to this circumſtance, it is to be acknowledged in general, that all the troops of Scotland, as well as thoſe in every feudal nation, felt more or leſs the tie of blood, vaſſalage, and clanſhip. To reaſon, therefore, from a part of theſe troops againſt the whole, is to be deceived one's ſelf, or to have an intention to deceive. To deſcribe the ſoldiers of the baron, as univerſally and peculiarly his friends, and to ſay, or to inſinuate, that thoſe of the ſovereign were regularly and merely his mercenaries, is to give a violent wound to truth and to hiſtory. In general, it may be affirmed, that every captain, under the command of the ſovereign, was to marſhal troops in the field, in every reſpect ſimilar to thoſe whom the factious noble was to lead out to rebellion.

A mercenary army was never any part of the Scottiſh conſtitution; and it is obſervable of the author, that while he appeals in this place to hired troops, as weak in themſelves, and as a mark of the weakneſs of our Kings, he conſiders them in other portions of his work as inſtruments of power and of dominion; and he objects a feebleneſs to our ſovereigns, becauſe they wanted them †.

* Hiſt. of Scotland, vol. i. p. 23. 24.

† 'Nor could the King ſupply the defect of his revenues by the ter-'ror of his arms. Mercenary troops and ſtanding armies were unknown 'as long as the feudal government ſubſiſted in vigour.' *Hiſt. of Scotland, vol. i. p. 15.* 'Deſtitute of that great inſtrument of dominion, a ſtand-'ing army, the authority of the King continued always feeble, and was 'often contemptible.' *p. 16.* See alſo vol. ii. p. 246.

Nor

Nor ought it to be forgot, that the national militia, or the *allodial* force of the kingdom, was at the call of the ſovereign *; and that he might employ it with efficacy, when it was neceſſary for him to uphold and ſupport the juſt prerogatives of the crown, or the invaded dignity of the nation.

IV. It is alſo advanced, 'that the ſmallneſs of their 'number may be mentioned among the cauſes of the 'grandeur of the Scottiſh nobles.' And the ſtrength of this obſervation is brought forward in this ſtrange faſhion. 'The power of an ariſtocracy always diminiſhes, in pro-'portion to the increaſe of its numbers; feeble, if divi-'ded among a multitude; irreſiſtible, if centered in a 'few †.'

The exact number of the Scottiſh nobility, in antient times, is not known. And, whatever quickneſs, and ſtrength, and ſenſibility may be imputed to a ſmall body; it is clear, beyond the poſſibility of a doubt, that an ariſtocracy muſt be broken more eaſily when it conſiſts of a few, than when it conſiſts of many. For, to gain one or two of its members, is to deſtroy it.

Other marks of fragility attend this argument. For, on the ſuppoſition, that the nobility of Scotland were few, it is to be inferred, that the tenants *in capite*, who were not noble, muſt have been numerous. There was the greater quantity of territory to be diſpoſed of to them. Now, to this claſs of men, the author has paid no attention. Yet, they muſt always have been conſiderable from their property, their numbers, and the vaſſalage in ſubordination to them. And their weight, going as a counterbalance to that of the nobility, a multitude of them muſt, in reality, have been ſuperior in wealth and influence to a few nobles. That they would naturally range themſelves under the royal ſtandard, is not to be doubted. For, if they diſobeyed the ſovereign, they expoſed their eſtates to forfeiture; and the nobles had no bribes equal to theſe with which to allure them.

V. 'Even in times of profound peace, the Scottiſh 'nobility,' it is ſaid, 'formed aſſociations, which, when 'made with their equals, were called leagues of mutual 'defence; and, when with their inferiors, bonds of 'manrent ‡.'

* Chapter ii. † Hiſt. of Scotland, vol. i. p. 24. ‡ Ibid, p. 25.

Aſſu-

Aſſociations of this kind, it is to be remembered, are common to every nation whatever, in certain periods of its hiſtory; and, though the contrary opinion is aſſerted by Dr. Robertſon, it is demonſtrable, that they were ſtill more frequent in France, in England, and in other nations, than in Scotland *. They are to be conſidered as proofs of the imperfection of government, rather than of the power of the nobility. And, though the baron might be ſtrong for a time, by leagues with his equals, or with his inferiors, it is to be obſerved, that they were always to impair his fortune, and often to waſte it altogether †; and that the ſovereign, while he had opportunities infinitely greater in giving ſtrength to his arm by ſimilar combinations, was not expoſed to the ſame diſadvantages.

VI. 'The frequent wars between England and Scotland,' it is contended, 'proved another cauſe of augmenting the power of the nobility ‡.' In general, it is to be thought, that theſe wars had a tendency to ſtrengthen the crown, rather than the nobles. They were to preſerve the latter from factions, by calling their attention to a common enemy, and by fixing their views on the intereſts of the ſtate and its grandeur.

It is urged, indeed, that theſe wars produced the propriety of inveſting the *wardenſhips* of the *marches* in the barons whoſe eſtates were on the borders §. Theſe offices, however, if they are to be conſidered as an augmentation of their power, are alſo to be regarded as a ſecurity againſt its abuſe. And nobles, in this ſituation, being anſwerable to the ſtate for their conduct, an act of rebellion was a virtual renunciation of this tranſitory and official conſequence.

VII. In fine, the moſt powerful of all the cauſes of the grandeur of the nobility of Scotland, is held out to be the frequent minorities of its princes ‖. Great advantages were, indeed, opened up by this calamity to an ariſtocracy for encroaching on the royal authority. In reality, however, the monarchical government was never deſtroyed or aboliſhed. The ariſtocratical form was ne-

* Bruſſel, Uſage-general des Fiefs. Abbe Mably, Obſervat. ſur l'Hiſt. de France. Hick's Diſſert. epiſt.

† See a paſſage in the margin of the next chapter from the *Icon Animorum*

‡ Hiſt. of Scotland, vol. i. p. 26. § Ibid. ‖ Ibid, p. 27.

ver to eſtabliſh itſelf. The antient polity continued uniformly in exerciſe and in power.

From theſe minorities, therefore, inſtead of inferring the extravagant and peculiar power of the Scottiſh nobles, it is to be concluded, that they either never intended the deſtruction of the monarchy, or were unable to atchieve it. This cauſe of power, accordingly, is to be viewed as a ſtriking confirmation of the weakneſs of all the other cauſes which Dr. Robertſon has been employed to advance and to inculcate.

But while, from a motive of reſpect for the popularity of this hiſtorian, and from a proper attention to my own opinions, I have touched upon each of theſe cauſes, it is now fit I ſhould remark, in general, that ſeveral of them are actually to be referred to one head. The want of great cities in Scotland, the diviſion of the country into clans, and the formation of aſſociations and leagues, were all conſequences of feudal manners, and are not, without an evident impropriety, to be treated as diſtinctive and peculiar ſources of the greatneſs of the Scottiſh nobles. To promote effects into cauſes, is, indeed, a practice too common with this hiſtorian. And here he not only commits this miſtake, but holds out the conſequences of a principle as in eſſential contradiſtinction to it. For he had expreſsly informed his reader, that he was to detail thoſe ſources of the power of the nobility which were accidental and ſingular, and had no connection with the genius of the feudal government *.

I muſt alſo give its weight to another general obſervation, which forces itſelf into notice, and which ſeems to ſtrike at the foundations of all that is advanced by this author. In conſidering the political condition of a feudal kingdom, we ought never to loſe ſight of the action of the different orders of men, and of the check they mutually gave to one another. To regard the nobility as uniformly the enemies of the crown, is to ſacrifice hiſtory to a hypotheſis. It is equally ſo to deſcribe them as

* 'The Scottiſh nobles enjoyed, in common with thoſe of other nations, all the means for extending their authority, which ariſe from the ariſtocratical genius of the feudal government. Beſides theſe, they poſſeſſed advantages peculiar to themſelves; the accidental ſources of their power were conſiderable; and ſingular circumſtances concurred with the ſpirit of the conſtitution to aggrandize them. To enumerate the moſt remarkable of theſe, will ſerve both to explain the political ſtate of the kingdom, and to illuſtrate many important occurrences in the period now under our review.' *Hiſt. of Scotland, vol.* i. *p.* 21.

peculiarly

peculiarly and exorbitantly powerful. It is no leſs abſurd to inſiſt for ever on the regular and the ſettled deſpotiſm of the Prince. And it is to incur a ſimilar cenſure, to enlarge on the balance of authority as conſtantly on the ſide of the people. In theſe caſes, we forget altogether the mixed form of government which characterized all the nations of Europe, and ſubſtitute, in its place, an ariſtocracy, a deſpotiſm, and a democracy. If we are to ſeek for the truth, we muſt look to the ſyſtem in all its branches and connections, and in all its variations.

Under the deepeſt impreſſion of the ſupereminent and irreſiſtible power of the nobles, the author, who has drawn from me theſe remarks, has executed a performance concerning Scottiſh affairs. This tenet is held out conſtantly, and always with pertinacity. A gaudy edifice catches the eye; and, while we are about to examine its parts, its foundations give way. 'Fine by defect, and 'delicately weak*,' it cannot wait to encounter the tempeſt.

* Pope, Epiſtle to a Lady.

CHAPTER XV*

The Prerogative of Private War. Compoſitions for Offences. The Pleas of the Crown. Law-burrows. The ſlow Progreſs of Juriſprudence.

IT appears to me, that, before the prerogative of private war was confined excluſively to the Lords of regality, it was exerciſed extenſively in the order of the nobility; and that even after it had grown to be illegal, the exerciſe of it continued to diſturb and to diſfigure ſociety. The origin and the nature of this privilege are treated in another work†; and in this place I am to ſpeak of it with a particular reference to the cuſtoms of Scotland.

Before the law is a regular ſcience, and before the magiſtrate acquires the knowledge and the practice of his proper powers, men muſt protect themſelves, and engage in aſſociations for defence and hoſtility. The individual

* See Book I. p. 37.

† View of Society in Europe, in its Progreſs from Rudeneſs to Refinement, Book I.

who

who glows with reſentment under an injury, if he is equal to his antagoniſt, will be forward to attack him; if he is ſuperior, he will flatter his pride and revenge, by inflicting a ſevere puniſhment; and, if he is neither equal nor ſuperior to him; he will court the ſtrength of thoſe with whom he is connected by relation and friendſhip. It was thus that our clans and families were to wage war, to deform ſociety, and to loſe ſubjects to the ſtate *.

Leagues and *bands* were in Scotland the names of factions of this kind †. Men of rank entered into them on a footing of equality, and to ſuſtain their mutual importance. And inferior men found a place in ſuch aſſociations, by giving their ſervice and force to powerful individuals, who, in return, afforded them countenance and protection ‡.

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* By a regulation in the *Salic code*, we learn, that, in very rude times, the party who, in revenge of a quarrel, had killed his enemy, was often to affix his head in a conſpicuous place near his dwelling, in order to ſtrike a terror of his power and proweſs. And, what is curious in a great degree, to take away this head without the conſent of the magiſtrate, or of the perſon whoſe property it had become, was conſidered as a crime, and compenſated by a fine. 'Si quis caput hominis, quod 'inimicus ſuus in palo miſerit, ſine permiſſu judicis, aut illius qui eum 'ibi poſuit, tollere praeſumpſerit, &c. den. qui faciunt ſol. xv. culp. iud.' *L. L. Sal. tit. 69. l 3. ap. Lindenb.*

This barbarous cuſtom gave riſe to other cuſtoms. Thus, when hunting was confined to the great, to kill a wild beaſt or a bird of prey, being a pride to the Lord or the Baron, he made a parade of it, by faſtening in ſhow, to the gates of his caſtle, the beak of a bird, the antlers of a ſtag, and the head of any noble or formidable animal. There is yet a remain of this uſage among game-keepers and the retainers of the rich. Trophies of this kind have moved from the doors of the palace to thoſe of the ſtable. What, of old, was the pride of the maſter, is now that of the ſervant.

It is a pain to reflect, that there is a period of manners when the head of a man is expoſed in wantonneſs and ſhow, like that of a bird or a beaſt. It is more painful to think that ſuch a ſpectacle or expoſition ſhould have had the ſanction of a judge; and that it muſt have been encountered, and ſeen by the common and unconcerned paſſenger in his walks, with as little emotion as the owlets, and hawks, and ravens, that are yet diſplayed in the variations of this faſhion.

† Stat. James I. parl. 1424, cap. 30.

‡ Craig, Jus Feudale, lib. ii. dieg. xi.

To the *deadly feuds* of our anceſtors, it has been ſometimes aſcribed, that the face of Scotland is ſo bare, and ſo little adorned with trees and groves; for hoſtile families were to waſte the plantations of one another. 'Caedem caede repenſare, decorum: Incendia alternis ignibus vindicant. 'Nec aperto tantum marte, inſidiis, fraudibus agunt. Nihil turpe, aut 'ignobile, ſatianti oculos inimicorum malis. Et haec peſtis ſaepe opri-'mates evertit; ſive inter ejuſmodi arma extinctos, ſive frequentium

'ſtipa-

This violent condition of ſociety laſted long, and was productive of the greateſt evils. The firſt blow which, in all countries, is given to private revenge, and private war, is the invention of fines or *compoſitions*. Theſe, in their riſe, were given only to ſatisfy the injured party, or his family. Afterwards, they are alſo demanded to ſatisfy the public for the infraction of its peace. In Scotland, it is to be conceived, that compenſations of both kinds were prior to the aera of any laws which now exiſt; and, in thoſe which remain, there are notices of them *. In late times, the fine to the private party had the title of *aſſythment*; and, on receiving it, the perſons or family injured were to grant *Letters of Slanes*, which contained a remiſſion of their malice, revenge, and reſentment †.

Compoſitions are followed by the diſcovery, that there are ſome offences more *peculiarly* hurtful to the *ſtate*; and the abſtraction of theſe altogether from the rude interference, and the violent partialities of *private* men, is an immenſe acquiſition. It was to ſeparate criminal and civil rules. It was to teach a *public* intereſt to a wide extent. It made the ſufferer, in the moments of his anguiſh, to forget, in ſome meaſure, himſelf, and to ſacrifice a part of his ſelfiſhneſs for the general tranquillity. It was the *King* who was now to complain, and to proſecute in the behalf of the ſociety. This beautiful privilege was to prepare the way for the moſt important improvements. Such is the origin of what, in England and Scotland, were termed *the pleas of the crown.*

'ſtipatorum (nam ſuſpectam vim inimicorum ita ſubmovere neceſſe eſt) 'ſera inopia, diſtractiſque fundis luentes: Etiam quod ut plurimum 'regio arboribus caret, quidam putant illorum odiorum facinus eſſe; 'dum adverſis facibus inimicorum ſylvas cremant, et privatis injuriis 'vaſtitatem patriae faciunt.' *Barclaius, Icon Animorum, ad. Reſpub. ſuae ſtat. Regni Scotiae, p.* 277.

* Reg. Majeſt. lib. iv. cap. 24. 36. 38. Stat. James I. parl. 1426, cap. 94.

† The words of this remiſſion, in the form or writ of the *Letters of Slanes*, are remarkable. 'We, by thir preſents, for ourſelves, and taking 'burden as ſaid is, forgive, paſs over, and forever forget, and in obli- 'vion inter, all rankor, malice, revenge, prejudice, grudge, and re- 'ſentment, that we, or thoſe for whom we take burden, in manner 'foreſaid, have, or may conceive againſt the ſaid A. P. or his 'poſterity, for the crime foreſaid.' *Dallas of St. Martins, Syſtem of Stiles, p.* 862. It is wonderful, that this form or cuſtom ſhould have been in practice in the days of Mr. Dallas, whoſe book was publiſhed in the year 1697.

This

This invention was to ſtrike at the root of private wars. When individuals were to acknowledge, that the community had a momentous concern in the puniſhment of crimes and miſdemeanours, they were diſpoſed to leave them to the cognizance of the magiſtrate. They were to obſerve, that the great law of ſociety is to reſpect its peace.

To enforce this rule, ordinances were made in a variety of forms. Abuſes, which had grown out of the prerogative of private war, were aboliſhed or reſtrained. And, as the nature and conſequences of crimes came to be underſtood, the individual was taught not to engage in hoſtility himſelf, but to rely with confidence in the protection and the power of the government.

James I. a prince of the greateſt talents, was to enact, that no man ſhould take the liberty to make war againſt another *. What was an ordination ſtill wiſer, he declared, that a party who dreaded harm and violence, might apply to a judge, who was to procure *ſecurity* to him from his enemy againſt deeds of outrage and war †. This was the origin of *Letters of Law-burrows* ‡. *Burrow* was the *pledge* or *ſurety*, that the *law* ſhould not be broken §.

It was a regulation of James II. that no *ſubject* ſhould ſeek any *ſecurity* from a *ſubject*; but that the king's peace ſhould be an *aſſurance* to all men ‖. James III. prohibited all courts of *guerra* or war ¶. And James VI. ordained, that no man ſhould accept the *aſſurance* or protection of thieves, or pay them *black-mail*, under the pain of death and the eſcheat of moveables *.

It is, by very gradual ſteps that laws are to produce their proper conſequences, and to be a laſting benefit to

* Stat. James I. parl. 1424, cap. 2.
† Stat. James I. parl. 1429, cap. 129.
‡ Dallas of St. Martins, Syſtem of Stiles, p. 447.
§ Spelman, Gloſſ. voc. Burghbrech.
‖ Stat. James II. parl. 1449, cap. 12.
¶ Parl. 1476, cap. 70.
* Stat. James VI. parl. 1567, cap. 21.

I ſuppoſe, that, originally, the preſent alluded to in this ſtatute, was called *Black-mail*, becauſe it was a payment in cattle. It was afterwards a payment in corn, and then in money. In England, of old, it was uſual to give out lands to tenants, partly for money, and partly for proviſions; and the payment in kind, got the name of *the Black-mail*. Tributes, too, under this appellation, were paid reſpectively to Engliſh and Scottiſh chiefs, on the borders of the two kingdoms, by the poorer inhabitants. They were thence protected during the incurſions and devaſtations of theſe barbarians. *Spelman, Gloſſ. voc. Black-mail.*

ſociety.

ſociety. The views of the legiſlature go, in general, beyond the ideas of the people. They muſt be inculcated and preſſed in a thouſand ſhapes. But the privileges, protections, and rights, which are neceſſary to the happineſs of man, are never, perhaps, to attain their full proportions and maturity. They ſtruggle for ever with the imperfections of the individual; and, in ages of civility, as well as of rudeneſs, they are to ſuffer from the prejudices and the imperfections of the legiſlature itſelf. In nature nothing is pure and without a mixture. Wiſdom and folly, virtue and vice, knowledge and ignorance, liberality and ſuperſtition, are all jumbled together, and fill up the bright and the melancholy picture of human affairs.

CHAPTER XVI*.

The Vavaſſor.

THE vaſſal of the tenant *in capite*, was called a *vavaſſor*. He was the vaſſal of a vaſſal. Thoſe who held of the vavaſſor, were named *valvaſini*; and this laſt term had a reference to every thing that is moſt mean in the ſcale of feudality †. The importance of the vavaſſor, I conceive, was to be aſcertained by the diſtinction of the perſon from whom he held, and from the quantity of the knight-fees which were conferred upon him. Yet on this ſubject authors have been doubtful.

Sir Henry Spelman lays it down, that a *meſne* tenant, who had more than a ſingle knight's fee, was called a *vavaſſor*, which he thinks was a degree above knights; 'yet,' ſays my Lord Lyttelton, 'we generally find that 'name applied to any vaſſal who held a military fief of 'a tenant in chief of the crown ‡.'

With Sir Henry Spelman, the learned author of the admirable Commentaries on the laws of England, ſeems in part to agree, when he conſiders the vavaſſor as next in dignity beneath a peer; but he expreſſes himſelf with

* See Book I. p. 37.

† Du Cange, Gloſſ. voc. Vavaſſores. Craig, Jus feudale, lib. i. dieg. 12. Skene de verb. ſignif. voc. Sub-vaſſores.

‡ Hiſt. of Henry II. vol. iii. p. 83.

heſitation,

heſitation, and does not allude to the idea, that the vavaſſor was *neceſſarily* to poſſeſs more than a ſingle knight's fee *.

In relation to the fees, or the property of the vavaſſor, it is very clear, that he might poſſeſs more or leſs, in proportion to his merits, and the will and generoſity of his ſuperior. But is it to be thought, that the tenant of the vaſſal *in capite*, took his rank immediately after the nobility, and before the dubbed knight? Was he of more conſideration than the perſon from whom he derived his importance? This is impoſſible.

A difficulty ſtarted by ſuch eminent men, ought not to have been abandoned by them. I will venture, notwithſtanding, a conjecture on this topic.

Let it be obſerved, that the nobility had ſub-vaſſals, as well as the ſimple vaſſals *in capite*. And let us conceive, that the term *vavaſſors* was applied to theſe; for they too were the vaſſals of vaſſals. Now, Bracton and antient lawyers talk of the vavaſſors as 'viri magnae dignitatis †.' But this deſcription could not apply to the ſub-vaſſals of the ſimple tenant *in capite*. It might apply, however, to the ſub-vaſſals of an earl or a baron. Theſe then were the vavaſſors to whom the books of antient law expreſs an alluſion. Theſe were the 'viri 'magnae dignitatis,' and took their rank immediately after the nobles, and before the dubbed knights.

In fact, the nobility who were the moſt wealthy and the moſt ſplendid, conferred grants, to a great extent, upon particular perſons who were high in their eſteem. And to theſe great tenants of over-grown ſubjects, the title of *baron* was often given. This, I imagine, was a conſequence of the reſpect which was attracted to them by their riches. They had the name of *barons*, but could not appear in parliament. Thus, Richard Fitzoſborn, and Thurſtan de Montfort, were the barons of Henry de Novo Burgo, Earl of Warwick. The eſtate of the laſt conſiſted of ten knight-fees; and there are inſtances of great tenants of the nobles who were called barons, and who were poſſeſſed of grants ſtill more extenſive ‡.

* Blackſtone, book I. chap. 12. † Lib. 1.

‡ Anderſon, diplom. Scot. tab. 21. Whitelocke's notes to the writ for chooſing members of parliament, vol. i. p. 310. Lord Lyttelton, Hiſt. of Henry II, vol. iii. p. 379. Brady, Tracts, p. 116.

It is proper for me, however, to obſerve, on this occaſion, that *vavaſſor* was peculiarly applied to the tenant of the ſimple vaſſal *in capite*, and that I have met no inſtance of it in an actual application to the great tenant of a great lord. I ſhould ſuppoſe notwithſtanding, that, in very antient times, the term might be uſed in this ſenſe; and, it is probable, that its uſe, in this ſenſe, did not decline till the ſuperior title of *baron* was given to ſuch tenants, and till they wiſhed formally to diſtinguiſh themſelves from inferior *vavaſſors*.

CHAPTER XVII.*

Fractions of the Fee. The Multiplicity of Little Manours. Scottiſh Lairds. And the Portioners of Land.

IN Scotland, there were fractions of the *fee*, as well as in the other nations of Europe. A charter granted by William the Lion, confirmed to William de Valloniis, the lands of Barnevin and Pannomor, and bound him to hold them 'per ſervitium *dimidii* militis †.' And the 'ſervitium *tertie* partis unius militis,' is the holding in a grant of confirmation by Alexander II ‡.

There were alſo fractions of fees, which flowed from the grant of ſubjects ſuperior. Waldevus, the ſon of Goſpatrick Earl of Dunbar, gave lands, 'pro ſervitio 'dimidii militis.' Richard de Moreville gave lands 'pro 'ſervitio *quarte* partis unius militis.' And Walter de Berkley granted out lands 'pro ſervitio *dimidii* militis ‖.'

The regular fractions of the fee were the eight parts, which were termed its *members*, and which had this appellation, from their being bound to perform the purpoſes of the grant. Of theſe, the poſſeſſors, according to the feudal rules, had manours and juriſdiction. Hence, a beginning was given to a multiplicity of *little manours*; and hence, as fiefs died away, there was produced the vaſt profuſion of *Scottiſh Lairds* who have ſo long been a ſubject of ridicule; and who, retaining the pride of feudal times, in the midſt of meanneſs, repreſs

* See Book I. p. 38.
† Anderſon, Diplomat. Scot. tab. 29. ‡ Ibid, 31. ‖ Ibid, 74 76. 78.

at

at this moment the ſpirit of improvement in every county in Scotland.

From the diſmemberment of the fee beyond the eight portions, into the twentieth, the thirtieth, the fortieth parts, and into fragments ſtill more minute, there aroſe alſo, I conceive, a claſs of men, more numerous and more inſignificant. I ſpeak of *the portioners of land*, to be found in every Scottiſh village, whoſe harveſt is half a ſheaf; and who, meagre with their petty pittance, point to it with vanity, and deſpiſe the honeſt toils of the mechanic.

CHAPTER XVIII*.

The Sheriff.

I HAVE ſaid, that the Sheriff, in his origin, was appointed by the Earl, and was merely his depute. Mr. Madox, I know, has contended, that the Sheriff or Viſcount was uniformly in the nomination of the King, and never in that of the Earl. 'In Anglia *Vicecomes* 'miniſter erat *Regis*, nequaquam *Comitis* †.' But this notion does not correſpond, either with feudal principles, or with hiſtory.

In the appendix to the Regiſter of Richmond, there is a certain proof that the Sheriff or Viſcount was in the appointment of the Earl, and to be conſidered as his ſervant or officer. It is a writ with this preamble: 'Alanus *Comes* Angliae et Britanniae Dapifero ſuo, et '*Vicecomiti*, et omnibus, baronibus ſuis Francis et An-'glis, ſalutem ‡.' The buſineſs of this deed was to renew and confirm ſome liberties and cuſtoms to the burgeſſes of Richmond.

The poſition, that the *Comes* or *Earl* might, of old, nominate his deputy, and that this deputy was the *Vicecomes*, is alſo illuſtrated in the *Marca Hiſpanica* ‖. And

* See Book I. p. 40.
† Not. ad Dial. de Scaccario, lib. i. cap. 17.
‡ Regiſt. Hon. de Richmond, p. 100.
‖ Marca Hiſpanica, ſive Limes Hiſpanicus, lib. iii. cap. xi.

Du Cange has preſerved examples of actual elections of the ſheriff by the Earl *.

The dignity of the ſheriff, accordingly, was originally perſonal and not feudal. He was the ſervant of the Earl who appointed him; and the ſame authority which inveſted him with rank, could deprive him of it. In the progreſs of time, his uſefulneſs recommending him to attention, his dignity was to become territorial. His office was connected with land, and rendered hereditary.

In Scotland, it is affirmed by Sir Thomas Craig, that this officer was conſtantly in the election of the Sovereign †. But, while his authority is made ſuſpicious by what is now urged, it is overthrown altogether by the following evidence. Henry the ſon of David I. as Earl of Northumberland, employs this addreſs in one of his charters. 'Henricus *Comes* filius Regis Scottorum, juſticiariis, baronibus, *Vicecomitibus*, prepoſitis, miniſtris et omnibus probis hominibus ſuis totius *Comitatus* ſui Northumberlandie, Francis et Anglicis, ſalutem ‡.'

* Gloſſ. voc. Vicecomes. † Jus Feudale, lib. i. dieg. 12.
‡ Anderſon, Diplomat. Scot. tab. 21.

CHAPTER XIX*.

The immeaſurable Power of the Chief Juſticier. The Nobile Officium of the Court of Seſſion.

I AM inclined to imagine, that the Court of Seſſion, as it ſwallowed up the civil powers of the great Juſticier, was alſo to imbibe a remarkable portion of the wild extenſiveneſs of his juriſdiction

It is well known, that the powers of this officer were exorbitant in every country of Europe. In England, many inclement acts, to the contempt of all law, were exerciſed by him †. And, on this ſubject, there is a memorable ſtory, which is told of Ranulph de Glanville, the famous lawyer and juſticier in the days of Henry II.

In the King's court at Worceſter, Gilbert de Plumtun, a knight, and a man of a noble extraction, was

* See Book I. p. 43. † Spelman, Gloſſ. voc. Juſticiarius.

produced

produced loaded with chains, and accuſed, before the King, of a rape, by Ranulph de Glanville the juſticier of England. The accuſation was made with no meaſure of propriety; and the judge, though he knew his innocence, was deſirous to condemn him. He was adjudged accordingly to be hanged on a gallows. To the gallows he was led out, amidſt a concourſe of ſpectators, who aſſerted his honour, and the injuſtice of his fate. Their clamours were diſregarded; and, in the moment that the knight was to ſuffer, the Biſhop of Worceſter, a holy man, interfered, by denouncing againſt the executioners the Divine vengeance, and that of the Church, if they ſhould preſume to exerciſe their office on a *Sunday*, and on the *feaſt* of Mary of Magdalene. Superſtition was more powerful than juſtice. Gilbert de Plumtun was reprieved till the next day. Henry II. in the mean time, moved with pity, and ſenſible that Ranulph de Glanville had been influenced by the low motives of reſentment and avarice, was induced to ſpare his life. Yet this unfortunate man, though he did not die by the halter, was made to languiſh in priſon, by the authority of the juſticier *.

The chief juſticier, ſays Sir William Blackſtone, 'from the plenitude of his power, grew at length both 'obnoxious to the people, and dangerous to the govern-'ment which employed him †.' This was to happen alſo in other kingdoms. The *Juſticia*, or Juſticier of Aragon, is compared by the Spaniſh writers to the tribunes of Rome, and to the ephori of Lacedaemon; and it was neceſſary to have a check to his authority.

In Scotland, it is to be conceived, that the exceſſive grandeur of the juſticier was no leſs inclement than in other nations. His powers, therefore, in civil matters, paſſing to the court of ſeſſion, it is not unnatural to ſuppoſe, that the extravagance of the juriſdiction he had exerted in rude times, was, in ſome degree, to diſtinguiſh this new tribunal.

A ſupereminent, a boundleſs juriſdiction, is claimed, in fact, by this court, has been exerciſed by it, and is thought to be lodged in it at this hour. I allude to the *nobile officium* of the court of ſeſſion, which, carrying in its uſe and nature the precarious juſtice, and the un-

* Hoveden, ap. Rer. Anglican. Script. p. 622. 623.

† Commentaries on the Laws of England, book iii. ch. 4.

principled rudeneſs of a barbarous age, is not to be conſidered as a right, but as a deformity.

Of this prerogative the offices are moſt extraordinary. It is a conſequence of its powers, that the court of ſeſſion has ſuſtained itſelf as competent to judge in matters of rank and precedency. Yet theſe are the acknowledged objects of another juriſdiction. In queſtions of the peerage it has determined. Yet theſe are known to appertain to the houſe of Peers *. The *nobile officium*, then, conveys a juriſdiction which is peculiar to, and inherent in other courts.

It does more. Wherever there is a wrong for which, it is fancied there is no remedy, it confers a power to the court of ſeſſion to interfere, to invent a rule or expedient, to judge, and to give this judgment as a precedent to poſterity. This court has, therefore, in effect, an authority to make laws. Here the judicial powers uſurp upon the legiſlative.

'The judges of the ſeſſion,' ſays an eminent lawyer, 'may, in their inquiries into facts, direct things to be 'done, or ſteps to be taken, which neither are, nor can 'be demanded as a point of right †.' They have thus an abſolute and inquiſitorial juriſdiction.

It has been ſaid, that the law is a hedge and a fence around the liberty of the ſubject. But the *nobile officium* can overleap this hedge and this fence. It can pronounce of a law, that it is in *diſuſe*, or that it is improper. Yet this law may be a ſtatute of the nation, and unrepealed ‡. It can look with impudence in the face of an act

* Hiſtorical Law Tracts, Hiſt. of Courts.

† Mr. Erſkine, Inſtitute of the Law of Scotland, p. 44.

‡ Id vere noſtrum jus eſt, quale eſt illud quod ex trium regni ordinum conſtitutionibus et ſtatutis, accedente principis conſenſu, promanat, et hoc jus regni proprium eſt: Et acta, quae dicuntur parliamentorum, primò inveſtiganda, quoties difficultas aliqua occurrat, ut nuper in jure Anglorum diximus. In his quid faciendum, quid fugiendum, primò inquirendum: Neque enim praeter ea, apud nos ullum jus ſcriptum, certum et ſtabile habemus. Sed profectò non ea religione haec apud nos ſervantur, qua apud Anglos; ubi nemo actum parliamenti, etiam longa deſuetudine penè abolitum, niſi expreſſa poſtera conſtitutione antiquatum, unquam violavit impune. Apud nos quaedam omnino in deſuetudinem abierunt: Veluti, ne liceat cuiquam inter feſta Simonis et Petri, et purificationem Virginis navigare; ne ludo pilae majoris ſe exerceat; de veſtibus advocatorum in parliamentis, et pleraeque ſimiles. Quaedam non in totum, ſed pro majori parte antiquata ſunt: Quale eſt illud de nullitatibus per exceptionem recipiendis; quod tantum in cauſis regiis, et quae circa ejus patrimonium verſantur, locum habet. Quaedam etiam, ſi locum habeant, ita ſenatus ſibi ſubjecit, ut interpretatione quò velint deducant;

act of parliament, and not only diſpenſe with its powers, but contemn them. No banks can withſtand this torrent. It burſts every channel, and wherever it flows, it carries deſtruction along with it.

To urge that the *nobile officium* belongs to the court of ſeſſion, as a court of equity, is to propagate a tenet in every reſpect frivolous. For equity has its rules as well as law, and depends not on what is called the moral ſenſe or the conſcience of particular men. It is to make a farce of all juriſprudence, and of all juſtice, to talk of equity as merely a depoſit in the breaſt of a judge, and not as artificial, regular, and ſyſtematic. It is to exalt the dictates and the caprices of individuals about the wiſdom and experience of ages, above evidence, authorities, and rules. It is to advance judges into deſpots. They are thus to be inveſted with a power, that is above law, and above equity. Their feelings, their capacities, their frailties, and their paſſions, are made to come in the place of the principles and the impartialities of juſtice.

In a ſituation like this, the moſt violent fluctuations muſt characteriſe the deciſions of a court. An alarming uncertainty muſt prevail. Judges will pronounce a decree, receive a reclaiming bill in oppoſition to it, alter the decree they had pronounced, and iſſue a new decree in abſolute contradiction to it. Foundations will be laid for chicane, for delays, and for expence *. Men of no virtue will be encouraged to engage in litigations. Men of probity, and conſcious of their rights, will feel a painful uneaſineſs. They will tremble to conſide their

deducant; quale eſt illud de inſtrumentis, ne in rebus hereditariis ſive gravibus controverſiis locum habeant, niſi duorum notariorum teſtimonio et ſignis confirmentur. Nam quae res magnae, quae graves controverſiae dicantur, ſibi ſenatus judicium reſervavit; in quo etiam ſaepe variatum vidi. *Jus Feudale, lib.* 1. *dieg.* 8. Theſe are the ſentiments of Sir Thomas Craig on the deſpotiſm of the court of ſeſſion.

* 'Not many years ago an appeal was brought to the Houſe of Lords 'from the court of ſeſſion in Scotland, in a cauſe between Napier and 'Macfarlane. It was inſtituted in March 1745; and, after many inter'locutors, orders, and ſentences below, appealed from and re-heard, as 'far as the courſe of proceedings would admit, was finally determined 'in April 1749; the queſtion being only on the property in an ox ad'judged to be of the value of three guineas. No pique or ſpirit of party 'could have made ſuch a cauſe, in the court of King's Bench or Com'mon Pleas, have laſted a tenth of the time, or have coſt a twentieth 'part of the expence.' *Sir William Blackſtone, Commentaries, book* iii. *ch.* 24.

honour and their property to capricious deciſion, or dogmatical authority *.

This *nobile officium* is a ſnare for the integrity of the upright ſenator. It is a cover for the wickedneſs of the ſenator who is corrupt. A court with this principle of action, muſt be arbitrary. It may invade whatever is moſt valuable in our rights. It is in a wild hoſtility with our conſtitution. It is a Turkiſh juriſdiction in a country of liberty †.

After ſuffering long in ſilence, the people will recover from aſtoniſhment to reflection. They will mature in their underſtandings. They will take courage from knowledge, from indignation, and from ſcorn. They will exclaim, in one voice, that there is nothing ſo equivocal, ſo inſolent, ſo looſe, and ſo tyrannical, as the *diſcretion* of a judge.

* Of old, in every country of Europe, the adminiſtration of juſtice was corrupt in the greateſt degree. Solicitation and money were applied without ſcruple or delicacy. In Scotland, in the days of James VI. the following law was enacted.

'Forſameikle as it is heavilie murmured be divers lieges of this realme, 'that our ſoveraine Lord electis and chuſis young men without gravitie, 'knowledge and experience, not havand ſufficient living of their awin, 'upon the ſeſſion, and that ſum of them be themſelves, their wives, or 'ſervands, takis buddes, bribes, guddes and geir, ſwa that juſtice, in 'effect, is coſt and fauld. For remeid quhairof, the Kingis Majeſtie, 'with advife of the three eſtaites of this preſent parliament, ſtatutis and 'ordainis, That none of the Lordes of ſeſſion alreddie received, or to 'be received, nouther be themſelves, or be their wives, or ſervands, 'take, in ony times cumming, bud, bribe, guddes or geir, fra quhatſume-'ver perſon or perſonnes preſently havand, or that hereafter ſall happen to 'have ony actions or cauſes perſewed before them, outher fra the per-'ſewer or defender, under the pain of confiſcation of all their movabil 'guddes that dois in the contrair, the ane halfe thereof to be applyed to 'our ſoveraine Lord, and the other halfe to the reveiler and tryer of the 'faidis bud takeris. And farther, decernis and ordainis the ſaid bud 'takeris to be diſplaced and deprived, *ſimpliciter*, of their offices quhilk 'they beare in the college of juſtice, and to be declared infamous, and 'als to be puniſhed in their perſones at the Kingis Majeſties will.' *Statutes, James* VI. *parl.* 1579, *cap.* 93.

† The eloquent Buchanan has given his opinion of the court of ſeſſion. His words are memorable. 'Omnium civium bona quindecim hominum 'arbitrio ſunt commiſſa, quibus et perpetua eſt poteſtas, et imperium 'plane tyrannicum, quippe quorum arbitria ſola ſunt pro legibus.' *Rer. Scot. Hiſt. lib. xiv.*

It has been reproached to this cultivated ſcholar, that he gives his ſentiments with too much liberty. I am ſurpriſed that ſo many critics have concurred in this cenſure. Is there a quality in an author ſo honourable, ſo uſeful, as that of expreſſing what he thinks? Is it proper that ſcience and learning ſhould be put in priſon, and diſhonoured by confinement and fetters? Miſerable is that nation where literature is under any form but that of a republic.

This

This ſubject is new; and yet we are in the cloſe of the eighteenth century. Theſe circumſtances might be urged as a proof of the ſlow progreſs of Scottiſh juriſprudence. But I am more intereſted to point them out as an argument of the deſpotiſm of the *nobile officium*, which I have preſumed to treat on the principles of public law. Arming itſelf with its terrors, it has not only ſupported its exiſtence ſo long, but maintained an awfulneſs and dignity. Perhaps I have taken advantage of the firſt moment, when it is not actually a *crime* to ſpeak of it with freedom.

CHAPTER XX*.

The Torture.

THE chief juſticier, who conferred its *nobile officium* on the court of ſeſſion, was to beſtow a more deteſtable gift on the court of juſticiary. In the ordeals, or the trials of fire and water which were practiſed among the barbarians before they marched from their woods, the torture had its riſe†. To the unlimited juriſdiction of the chief juſticier, it was admirably ſuited; and when the juſtice-court ſucceeded to his criminal powers, it was to retain, and to foſter this odious prerogative. From the juſtice-court, or the court of juſticiary, it was adopted by the privy-council of Scotland. And it is well known, that this laſt juriſdiction was to exceed the ſtar-chamber of England in every thing that is moſt daringly and moſt exquiſitely profligate.

To the diſgrace of humanity, the torture, as a part of our law, was to continue till the days of Q. Anne§; and with marks of atrocity which were not uſual in other nations. In Scotland, the ſuſtaining of the torture was not uniformly to juſtify the criminal. Upon new preſumptions he might again be fitted to the rack.

* See Book I. p. 43.

† In the *LL. Burgorum*, which were enacted or enforced by David I. there is an alluſion to a peculiar kind of torture. See *cap.* 21. *and Du Cange, Gloſſ. voc. Tumbrellum.*

§ 7. Ann. cap. 21.

It

It might be inflicted upon perſons of a tender age. It might be exerciſed upon women. Being reſtrained only by the diſcretion or the wantonneſs of judges, it might mock the natural miſeries of men, and force them to groan by ſtudied and artificial agonies, while under the languors of ſickneſs, and under the preſſure and the debilities of years ‖. Even after ſentence had been given, the object of perſecution was not in ſecurity from it. The unfortunate victim, whom anguiſh and pain had convicted of a crime of which he was innocent, and who waited with impatience to forget a ſhame that was not his, in the completion of human puniſhment, might, before he ſuffered, be dragged anew to the torture, to diſcover his accomplices, and be mangled and torn to accuſe men as innoxious as himſelf.

Amidſt the formalities of a precaution ſo abominable §, the criminal, though debaſed with wretchedneſs, and execrable with guilt, could yet find, in his ſituation, a ſubject for pride; and while his eye ſpoke the troubled emotions of his ſoul, it could glance with diſdain to judges inſulting with gravity the dignity and ſenſibilities of nature and man.

‖ Sir George Mackenzie, Laws and Cuſtoms of Scotland, in Matters Criminal, part ii. tit. 6. 27.

§ The uſe of the torture in England, in old times, is illuſtrated by Mr. Barrington *Obſervations on the more antient ſtatutes, 3d edit. p.* 80. 440. 442. It ſeems to have prevailed in every country of Europe.

CHAPTER XXI*

The King's Court, and the National Council, or the Parliament.

IT is remarkable, that the King's court, and the high court of parliament, are almoſt always confounded. My Lord Kaims inculcates the notion that parliaments were the King's *baron-courts* †. And, on this topic, the hiſtoriographer of Scotland, in his account of its internal conſtitution, does his Lordſhip, as uſual, the honour to adopt his opinion §. He does not, however, appeal

* See Book I. p. 45.

† Eſſays on Britiſh Antiquities, Fff. ii.

§ Dr. Robertſon, Hiſt. of Scotland, vol. i, p. 65.

to the authority of this ingenious and reflecting lawyer, any more than in other places where his obligations are ſtill greater. Sir George Mackenzie *, and other writers, had ſaid the ſame thing before them. But the King's *baron-court* was the *Aula Regis*. And *Parliaments* were formed upon other and more enlarged maxims. The diſtinctive characters of the two courts will appear, I imagine, from what I have ſaid of each †.

The obligation of the royal vaſſals, to attend the hall of the ſovereign, and to be ſuitors to his court, did not confer upon them the privileges of legiſlators. Yet this, I conjecture, is the principle from which theſe writers would derive the conſtitution of parliaments. It is very clear from hiſtory, that, in the different countries of Europe, the power of the general councils or parliaments, in very antient times, was frequently exerciſed, even to the prejudice and deſtruction of kings themſelves. Now, on the ſuppoſition that ſuch courts were the King's *baron-courts*, it muſt follow, that the vaſſals of the prince might aſſemble in his *palace*, to controul his authority, to puniſh his delinquence, and to throw him down from royalty. This, ſurely, could not be the caſe.

The palace of the prince was the proper place for the tenants *in capite*, to conſtitute his *baron-court*, or the *Aula Regis*. But, general councils or parliaments were uſually to be held in churches, abbeys, and caſtles.

In the King's court, we ſee the meetings of a ſuperior and his vaſſals. In the parliament, we ſee the conſtituent parts of the ſtate in deliberation about its affairs and proſperity. In the former, the King was a great object. In the latter, he appears with a diminiſhed ſplendour

There ſeems no point in hiſtory more obvious, than that there was a moſt eſſential diſtinction between the King's court, and the court of the nation, between the *Aula Regis* and the *Parliament*. Yet, I acknowledge, that, in ancient books, when *courts* or *councils* are mentioned, it is often difficult to ſay, whether the alluſion may be intended to expreſs the former or the latter. There are, however, actual examples where the application admits not of doubt; and, in ſuch examples, we

* The Inſtitutions of the Law of Scotland, book i. tit. 2.

† Chapter iv. ſect. i. chapter v.

muſt

muſt ſee and acknowledge the reality of their diſtinctions. Thus, *curia* is uſed with preciſion, in expreſſing the court of the King, as well as the court of the Nation; and the *magnum concilium* is made to peculiarize the convention of the king and his nobles, as well as the aſſembly of the eſtates or the parliament ‖.

‖ Du Cange, Gloſſ. voc. Curia. Spelman, Gloſſ. voc. Magnum Concilium.

CHAPTER XXII*.

Titles of Honour.

WHEN it was the faſhion to diſunite territory from honours, *titles* came into uſe. Hence, the late appearance of mere titles of nobility, in all the kingdoms of Europe. In Scotland, the dignity of Duke was much poſterior to thoſe of Earl and Baron. It does not ſeem to have been known till the times of Robert III. †. And the titles of Marquis and Viſcount were not in exiſtence till the days of James VI. ‡.

Knighthood, as an *honour* in connection with arms and with land, was, I conceive, of high antiquity in Scotland, as well as in other nations; though it is difficult to find any traces of it before the age of Malcolm III. The oath adminiſtered to knights in this kingdom, has been preſerved with more care, than the other circumſtances which relate to this order; and it illuſtrates the ſpirit and gallantry which took their riſe from chivalry ‖. The knighthood of chivalry, however, is not to be conſidered as a mere *title* of honour; and the title of baronet, which was ſuggeſted by it, was not introduced till the times of James VI. §.

* See Book I. p. 48. † Acta Rob. III.
‡ Selden, Tit. Hon. part ii. ch. vii. ‖ Public Papers, No. III.
§ Spelman, Gloſſ. voc. Baronettus.

CHAP.

CHAPTER XXIII*.

The Knight's Fee, a Parliamentary Qualification.

IT has already been obſerved, that the knight's fee might be divided into particles. It might even be ſplit into ſixty fragments; and of ſuch ſmall fractions, there were tenants *in capite* of the crown†. Theſe vaſſals were very low in life, and their property was not ſufficient to maintain them with common decency. Yet, by a ſtrange miſtake, Dr. Robertſon has admitted them into our parliaments. For, to this honour, he advances every tenant *in capite*, without exception ‡.

I inſiſt not on a whimſey, which is ſo obvious in itſelf, that even folly cannot be deceived by it. The hiſtoriographer of Scotland did not, I imagine, perceive the full import of the language he employs; and I willingly place this ſlip among thoſe unavoidable inadvertencies, from which no literary performance was ever free §. Yet, in an author who is fond of tenets that are ſlaviſh and ignoble, it is pleaſant to remark a miſtake of this ſort. A propagator of high principles of monarchy promotes the meaneſt of all mankind, the refuſe and banditti of a nation, into the rank of its legiſlators. He goes beyond all the admirers of liberty, and exceeds the maddeſt rage of republican ardour.

The loweſt parliamentary qualification was, I conceive, *a ſingle knight's fee* held from the crown. This idea accords with the ſpirit of the feudal ſyſtem; and a ſingle fee muſt have been a conſiderable eſtate. It will not eſcape the attention of the thinking reader, that the prince had it thus very much in his power to add to the number of this claſs of men. On the forfeiture, for example, of a baronial eſtate, he might diſmember it, and give it away in ſingle fees, to a long train of proprietors. Hence, he might command an immenſe weight in parliament. And to this ſource, doubtleſs, though it is unnoticed by our hiſtorians, we muſt refer, in a con-

* See Book I. p. 48.

† Madox, Hiſt. of the Exchequer, vol. i. p. 651.

‡ Hiſt. of Scotland, vol. i. p. 65.

§ ——— Quas aut incuria fudit,
Aut humana parum cavit natura. Horat

ſiderable

ſiderable degree, the influence of the ſovereign in thoſe antient times, which preceded the repreſentation of the ſimple vaſſals *in capite*, or the inferior tenants of the crown.

CHAPTER XXIV*.

The Diſtinction of the Greater and the Leſſer Barons.

IT is an interruption to this work, that I find a popular writer perpetually in my way. But, I deſire it to be obſerved, that I content myſelf with pointing out thoſe errors of his only, which are more materially connected with my ſubjects; and this, without taking the trouble, on every occaſion, to ſhow my argument in all its ſtrength, or to make it preſs in the ſcale of controverſy, with its fulleſt weight. For, I differ from him, rather with the view of ſupporting my own opinions, than from any pride of overturning his. And this intimation, I truſt, the ſpirit of theſe papers has already conveyed to thoſe of my readers, who have attended to the hiſtory of the middle times, and are the moſt verſant in the topics I venture to treat.

'The vaſſals of the crown,' ſays Dr. Robertſon, 'were originally few in number, and extremely powerful; but, as it is impoſſible to render property fixed 'and permanent, many of their poſſeſſions came gradually, and by various methods of alienation, to be 'ſplit and parcelled out into different hands. Hence 'aroſe the diſtinction between the *greater* and the *leſſer* '*barons*. The former were thoſe who retained their 'original fiefs undivided; the latter were the new and 'leſs potent vaſſals of the crown †.'

From this reaſoning, it is to be concluded, that the original vaſſals of the crown were all *great* barons; and that the ſplitting of their poſſeſſions or baronies was to produce the *leſſer* barons. This diſtinction, however,

* See Book I. p. 48.

† Hiſtory of Scotland, vol. i. p. 65. 66.

was

was long prior to the ſplitting of baronies, and could not owe its riſe to this circumſtance. This is to date the origin of the *leſſer* barons ſome centuries after they had been known in every nation of Europe. It is to aſcribe to fiefs, in their decline, what was characteriſtic of them, from the age of their perpetuity, and the invention of knight-ſervice. It is to annihilate altogether, for long periods of time, an order of men, who had great political influence, and who made a figure in the army and in the ſtate.

Tenants *in capite* were as old as barons, properly ſo called. Under the general name of tenants *in capite*, or of the crown, there were included, not only the nobility, but thoſe private gentlemen who had eſtates from the ſovereign. Now, to theſe two claſſes of men, the term *baron*, as denoting the royal vaſſal, was applicable, and, of this, the examples are endleſs. But the tenant *in capite*, who had been created into *nobility*, was eſſentially different from the ſimple tenant *in capite*, who had only knight-fees †. He was the *greater* baron, and the other was the *leſſer* baron.

To conceive with this author, that all the vaſſals of the crown were originally *nobles*, or great barons, is to admit an abſurdity. The original poſſeſſor of a fief might hold it undivided, without being a *noble* or a *great* baron. He might poſſeſs a ſingle knight-fee, twenty knight-fees, a thouſand knight-fees, or any number of them whatever, without belonging to the order of the nobility. Before he could be *noble*, it was neceſſary that his knight-fees ſhould be erected into an *honour* by the prince.

The ſplitting, however, of baronies, though it was not the effective cauſe of the creation of the *leſſer* barons, was to add greatly to their number. But it ought not to be forgot, that the ſplitting down of the eſtate of a ſimple tenant *in capite*, was likewiſe to be attended with the ſame conſequences. For, an eſtate of twenty knight-fees, which had belonged to a vaſſal of this kind, might be granted away to twenty proprietors, and give a parliamentary qualification to each of them.

I perceive, that the abſtaining from the conſideration of the condition of the ſimple tenant *in capite*, has produced the greateſt confuſion in our antiquities, as well

† Chapter iv. ſect. ii.

as in thoſe of other nations. The majority of authors delight to ſurvey the regal and ariſtocratical parts of the feudal ſyſtem. They attend neither to the numbers, nor to the importance of the inferior tenants *in capite*; and they overlook the greatneſs of the people.

CHAPTER XXV†.

The Knights or Commiſſioners of the Shire.

THE ſtatute or ordination, which eſtabliſhed 'the 'knights or commiſſioners of the ſhire,' was a parliamentary act, and is expreſſed in the following terms.

'The King, with conſent of the haill councel, gene-'rallie has ſtatute and ordained, that the ſmall baronnes 'and free-tennentes neid not cum to parliaments nor ge-'neral councels, ſwa that of ilk ſchirefdome their be ſend, 'choſen at the head court of the ſchirefdome, twa or maa 'wiſemen, after the largenes of the ſchirefdome, outtane 'the ſchirefdomes of *Clakmannan* and *Kinroſſe*, of the 'quhilkis ane be ſende of ilk ane of them, the quhilk 'ſall be called *commiſſares of the ſchire*, and, be thir 'commiſſares of all the ſchires ſall be choſen ane wiſe 'man and expert, called the commoun ſpeaker of the 'parliament; the quhilk ſall propone all and ſindrie 'needis and cauſes, pertaining to the commounes in the 'parliament or general councel, the quhilkis commiſſares 'ſall have full and hail power of all the laif of the ſchi-'refdome, under the witneſſing of the ſchrireffis ſeale, 'with the ſeales of diverſe barronnes of the ſchire, to 'heare, treate, and finallie to determine all cauſes to be 'proponed in councel or parliament: The quhilkis com-'miſſares and ſpeakers, ſall have coſtage of them of 'ilk ſchire, that awe compeirance in parliament or 'councel, and of their rents, ilk pound ſall be utheris 'fallow to the contribution of the ſaid coſtes. All bi-'ſhoppes, abbottes, priors, dukes, erles, lordes of par-'liament, and ban-rentes, the quhilkis the King will 'be received and ſummoned to councel and parliament, 'be his ſpecial precept ‡.'

† See Book I. p. 49.

‡ Statutes, James I. parl. 1427, cap. 102

As

As the Scottiſh parliament was not divided into two houſes, 'the common ſpeaker,' here alluded to, did not advance into high conſideration. With regard to the *banrentes*, who are enumerated among the parts of the parliament, it may not be improper to obſerve, that they were tenants *in capite*, who had the right of a *banner*, or the command of a troop. Their feudal eſtates were ſo conſiderable, that their military command extended over vaſſals who were numerous enough to entitle them to have a ſtandard; and as, in this diſtinction, they rivalled the nobles, ſo, like them, they had alſo the privilege of being called to the parliament *.

A moſt important diſtinction between the knights of the ſhire in England and Scotland is to be remarked. For we muſt not conceive, with my Lord Kaims, that, in England, the knights 'were elected preciſely as in 'Scotland †' It was only the ſimple tenants *in capite* who were to be repreſented in Scotland. But, in England, the whole community of the counties was repreſented. The freeholders or electors of Scotland were tenants of the crown. But the freeholders of England were the whole poſſeſſors of territory or tenement. The repreſentation of the Scottiſh counties was partial and incomplete; for it excluded from the right of electing, or of being elected, all the proprietors who did not hold of the crown. The repreſentation of England was general, and on the grand line of democratical polity.

The conſideration of the cauſes of this eſſential diverſity in the two nations, would lead to curious inveſtigation; but is too great an object for a chapter in this work. I cannot, however, omit the opportunity to obſerve, that the faſhion of deſcribing the uſages and cuſtoms of Scotland, as adoptions from England, is in a high degree deceitful and fallacious. The ſimilarity of the inſtitutions of the two kingdoms, is not always ſo great as it is ſuppoſed; and, where it is ſtrongeſt, it has its foundation in the nature of fiefs. Now, theſe were common to the other nations of Europe, and produced in all of them a general likeneſs or ſimilitude. Yet, in all of them, there were circumſtances of diſcrimination; and Scotland was not, any more than the

* Spelman, Gloſſ. voc. Banerettus.
† Eſſays on Britiſh Antiq. Eſſ. ii.

other feudal ſtates, to be governed by a mean ſpirit of imitation.

Of the law of James I. which I have recited, and which is ſo memorable in our hiſtory, there is a confirmation and an improvement by James VI. They are in theſe words.

'Our ſoveraigne Lorde, conſidering the acte of his 'Hieneſſe parliament, halden at Linlithcow, the tenth 'day of December, the zeir of God, one thouſand five 'hundredth, fourſcore, five ziers; making mention, how 'neceſſar it is to his Hieneſſe, and his eſtaites, to be 'trewlie informed of the needes and cauſes pertaining 'to his loving ſubjects in all eſtaites, ſpeciallie the com-'mounes of the realme. And remembring of ane gude 'and lovable acte, make by his Highneſſe progenitour, 'King James the firſt, of worthie memorie, in the par-'liament halden at Perth, the firſt day of March, the 'zeir of God ane thouſand, four hundreth, twenty-'ſeven zeires, anent the commiſſioners of ſmall bar-'ronnes in parliament; that his Majeſtie, and his ſaidis 'eſtaites, wald ratifie and appreeve the ſame to have full 'effect, and to be put to execution in time cuming: 'and of new, ſtatute and ordaine, for the mair full ex-'planation of the ſame act, and certaine execution 'thereof, that precepts ſuld be directed foorth of the 'chancellarie, to an barron of ilk ſhire firſt, to conveene 'the freehalders within the ſame ſchire, for chuſing of 'the commiſſioneres, as is contained in the ſame acte: 'quhilkis commiſſioners, being anis chooſen, and ſend 'to parliament, the precepts of parliament, for conveen-'ing of freehalders, to the effect foreſaid, to be direct-'ed to the laſt commiſſioners of ilk ſchire, quhilkis ſall 'cauſe choiſe twa wiſe men, being the *Kingis free-hald-'ers*, reſident indwellers in the ſchire, of gude rent, 'and weill eſteemed, as commiſſioners of the ſame 'ſchire, to have power, and to be authorized, as the 'acte proportis, under the commiſſioners ſcale, in place 'of the ſchireffes; and that *all free-halders of the King*, 'under the degree of prelates and lords of parliament, 'be warned by proclamation, to be preſent at the 'chooſing of the ſaidis commiſſioners; and nane to 'have voit in their election, but ſik as has *fourtie ſhilling 'land in free-tennendrie, halden of the King*, and has their 'actual dwelling and reſidence withing the ſame ſchire.

'—And

'— And that the compeirance of the ſaidis commiſſion-'ers of the ſchires in parliaments or general counſelles, 'ſall relieve the *hail remanent ſmall baronnes and f ea-'halders of the ſchires*, of their ſuites and preſence, 'aucht in the ſaids parliaments *.'

By this act no perſon was to vote for the commiſſioner of the ſhire, or to be capable himſelf of being elected to this honour, who did not poſſeſs a forty-ſhilling land holding of the crown. By the act 1681, lands of four hundred pound of valued rent, holden of the crown, are conſidered as equivalent to a forty-ſhilling land of old extent. And proprietors under theſe deſcriptions continue to elect and to be elected.

On the foundation, however, of theſe acts, an ingenious contrivance has been practiſed. In conſequence of ſplitting and dividing eſtates, *qualifications* are created. Thus, a real freeholder may retain a ſufficient qualification for himſelf; and, if his fortune can bear it, may raiſe up ten or more qualifications, which he may diſtribute to his friends, who are to vote by his direction. This immenſe multiplication of voters does not ſeem to accord with the ſpirit of the Scottiſh conſtitution. The legiſlature intended, that the real freeholder, whatever eſtate he might poſſeſs, ſhould only have a voice for himſelf. It could never mean, that he ſhould be followed by a train of freeholders of his own making.

* Stat. James VI. Parl. 1587, cap. 113.

CHAPTER XXVI*.

Points of Honour, and Peculiarities of Rank.

IN towns, where men gather together in bodies, there are always the greateſt encouragements for virtue and vice. Individuals go to them as to a market, and put up to ſale their talents and their demerits. Even in ancient times there were, therefore, a multitude of inhabitants in them, who were neceſſarily of a moſt mean and low condition. Hence it happened, that particular

* See Book I. p. 51.

expreſſions were invented to do honour to *burgeſſes*, and to diſtinguiſh them from *villeins* and the mob. They were called for example *boni homines**. Hence the phraſe, *the good town*, which is yet in uſe throughout Scotland. And hence the ſpeech of Brian Taſh, the yeoman of the guard, who, in the days of James I. of England, ſent rudely ſome *commoners* from the houſe of peers: 'Good men BURGESSES, you come not here †.' The expreſſion for the ſlaves and the rabble was *homines poteſtatis*, *gens de pooſte*; and hence 'the knights of the 'poſt' is yet, in England, the deſcription of thoſe deſpicable men who give their evidence for hire.

After the rights of the burgeſſes were invaded, and when the King and the nobles, in the decline of fiefs, exerciſed oppreſſion upon the cities and boroughs within their juriſdictions, men of rank and faſhion were to be attached to a country-life in a more particular manner. They had at all times been fond of reſiding at their eſtates, from the grandeur and conſequence they enjoyed in them. But this cuſtom, from the humiliation of the towns, had become more flattering. And, when their affairs called them to reſide, for a few days, in any city or borough, they went conſtantly in boots and ſpurs, that they might not be miſtaken for citizens. Hence the invidious diſtinction of the *gentleman* and the *burgher*.

Of the *homines poteſtatis*, the condition was moſt miſerable and wretched. When they eſcaped from their maſters, it was a law in every nation of Europe, that they might be drawn back by the *noſe* to *ſervitude* ‡. Hence it came to paſs, that, to pull a *free man* by the noſe, was to treat him like a *villein* or a *ſlave*. Such was the origin of a point of honour which ſtill exiſts. It is now a part of our manners, and has ſurvived the cauſes which gave it birth.

In times when the feudal law introduced the moſt exact diſtinctions about rank, and when the decorums of chivalry drove them to a moſt punctilious extremity, a thouſand delicacies in civil life were to ariſe.

* Du Cange, Gloſſ. voc. Boni Homines.

† Petyt, Jus Parliamentarium, p. 234.

‡ Et cum aliquis adjudicatur nativus, ſeu bondus uni domino; poteſt ille dominus, ipſum, per *naſum ſuum*, redigere ad priſtinam *ſervitutem*. Quon. Attach. cap. 56. l. 7.

To

To the affirmations of a ſlave or a mean perſon, no attention was paid. It did not ſeem that he could have any faith or probity. But a gentleman, when he advanced his word, or when he pledged his honour, could not be doubted. To ſuſpect his veracity, was to inſult him. When a nobleman advanced his word, or pledged his authority, he was ſtill leſs expoſed to ſuſpicion. His affirmation was equivalent to an oath. Hence, to this hour, when a peer is ſitting in judgment, he gives his verdict upon his *honour*. A peculiarity which is well known in the Engliſh law, gives its ſtrength to this reaſoning. For, while the peer enjoys, from his nobility, this beautiful diſtinction, he loſes it when he is a ſimple witneſs in a civil or criminal cauſe. He muſt then be upon oath; for he is acting as a plain man, and not in his own character.

It may be added, that, of old, from a ſimilar ſpirit of uſages, the damſels who attended the Queen, were termed 'Maids of *honour*.'

CHAPTER XXVII*.

Facts, Reaſonings, and Conjectures to illuſtrate the Hiſtory of Towns.

IT is a matter of ſurprize, that authors, even of eminent talents, in producing what they are pleaſed to conſider as the evidence of the uniform ſervility of the towns and the people, do not perceive, that, in general, they are buſy to refute the concluſion about which they are ſo anxious.

As a proof of the ancient ſlavery of the towns and the people of England, Dr. Brady and Mr. Hume appeal to the charter of liberties to the city of London by William the Norman. 'The famous charter, as it is 'called, of the Conqueror to the city of London,' ſays the laſt of theſe writers, 'though granted at a time when 'he aſſumed the appearance of gentleneſs and lenity, is 'nothing but a letter of protection, and a declaration 'that the citizens ſhould not be treated as ſlaves §.'

* See Book I. p. 51.

§ Hiſt. of England, vol. i. Append. ii.

This is not merely a ſtrong method of expreſſing himſelf. There is even ſomething ſupercilious in it, as if the matter could not admit of any diſpute. Yet, in fact, this charter only proves, that the feudal cuſtoms had grown to be oppreſſive. It offers, accordingly, a mitigation of uſages which were cruel and unjuſt; and it actually alludes to the *freer* and the *happier* condition which the people had enjoyed in the Saxon times *.

In the ſame faſhion they appeal to the *Magna Charta* as an evidence, that the liberties of the towns and the people were produced by the grants of the ſovereign. Yet the *Magna Charta* was a renovation of former liberties; and, with regard to London, in particular, it ordains, that it ſhall be admitted to the enjoyment of its *ancient* and *free* cuſtoms. 'Et civitas Londinenſis habeat 'omnes *antiquas libertates, et liberas conſuetudines ſuas*, 'tam per terras, quam per aquas †.' They diſregard the real intentions of this deed, and view it in a light that is partial and deluſive.

Mr. Hume has inſiſted, that the *tallages*, with which the ſovereign oppreſſed the towns, are an argument of the long and deplorable dejection of the people ‡. Yet the *tallage* which the prince came to exact at *his* pleaſure, was founded on a *benevolence*, which the inhabitants of them had beſtowed upon him at *their* diſcretion. Before it was a *tax*, it was a *donum* or a preſent. It had been expreſſive of freedom and generoſity, before it denoted oppreſſion and tyranny ‖.

He contends, that, till the invention of *communities* by Louis the Groſs, the towns did not form any body politic, and were held together by no civil tie §. Yet, the erection of communities was expreſsly to revive their ancient importance; and gilds, fraternities, and corporations,

* This charter is as follows. 'Willielmus Rex ſalutat Willielmum 'Epiſcopum et Godfridum Portegreſium, et omnem Burghware infra 'London. Franc. et Angl. amicabiliter: Et vobis notum facio, quod ego 'volo, *quod vos ſitis omni lege illa digni, qua fuiſtis Edwardi diebus Regis.*'

'Et volo quod omnis puer ſit patris ſui hæres poſt diem patris ſui. Et 'ego nolo pati, quod aliquis homo aliquam injuriam vobis inferat. Deus 'vos ſalvet.' *Charta Will. Regis. ap. Spel. Gl. Leg. Vet. p.* 290.

† Mag. Charta, ap. Spelman, Cod. Leg. Vet. p. 369.

‡ Hiſt. of England, vol. ii. p. 90.

‖ View of Society in Europe, in its Progreſs from Rudeneſs to Refinement, book ii. ch. v. and the notes.

§ Hist. of England, vol. i. Append. ii.

were

were known in the Saxon times, and, indeed, are as old as the ſettlements of the barbarians †.

But, around the greateſt miſtakes of this illuſtrious man his genius has thrown a dazzling light of uncommon ingenuity; and no candid inquirer will diſſent from him, without doing him the juſtice to admire his talents. It is by reflection, and in the writings of his imitators and followers, that his errors appear with all their diſadvantages.

This argument, in particular, about the riſe of *communities*, has been inſiſted upon as very powerful. And it is concerning the charters of community, in the twelfth and thirteenth centuries, that the biographer of Charles V. has this paſſage. 'Theſe may be conſidered as the 'firſt rudiments of law and order, and contributed 'greatly to introduce regular government among all the 'members of ſociety. As ſoon as communities were 'inſtituted, high ſentiments of liberty began to ap'pear ‡.'

Is it poſſible, even in the ſlighteſt degree, that theſe charters could be the *firſt rudiments* of law and order? Was there neither law nor order till theſe charters were granted? Was every thing in confuſion and tumult for ſo many ages? And, from the irruptions of the barbarians, till this fortunate æra, did the nations of Europe entertain no ſentiments of liberty? All this is incredible. Theſe charters, in fact, were to renew a condition of ſociety, which had exiſted in prior times, and which had been defaced by the breaking down of the feudal ſyſtem. They were to bear in their boſom an alluſion to this condition of ſociety. And juriſprudence and law had actually grown into *codes* and *ſyſtems*, in many countries of Europe, long before the twelfth and thirteenth centuries.

Theſe codes and ſyſtems are known to the learned. Thy are not peculiar to one or to two tribes of the barbarians, who conquered and made ſettlements. They are to be found in many of them. They may be traced as they roſe in Spain, in Italy, in France, in Germany,

† Spelman, Gloſſ. voc. Gilda. Domes-day Book, as cited by Dr. Brady, and other writers.

‡ Hiſt. of Charles V. vol. i. p. 257.

and in England *. In innumerable inſtances they are even admirable for their wiſdom. The learned Giannone delights to mention them, in terms the moſt reſpectful †. The penetrating Grotius has extolled them as preferable, on many accounts, to the civil laws, or to the juriſprudence of the Romans ‡. The immortal Monteſquieu has, on ſome occaſions, done them the honour to ſpeak their eulogium ||.

But, while it is to wander very widely into the regions of romance, to aſcribe the firſt rudiments of *law* and *order* to the charters of community, in the twelfth and thirteenth centuries, it is equally ſo to impute to them, with this writer, the introduction of *high ſentiments of liberty*. The barbarians were animated with high ſentiments of liberty in their foreſts. They carried them into their conqueſts; and every where, in the early periods of their hiſtory and legiſlation, the marks of them are to be obſerved in characters that are ſtrong and indelible.

Till the decline and confuſions of the feudal ſyſtem, the condition of Europe, in all its kingdoms, was free and limited. It was in conſequence of the change of the Gothic and the Celtic manners, that the people were to paſs from a ſtate of liberty, to a ſtate of oppreſſion, and that the original ſpirit of the feudal aſſociation was to undergo a total alteration §.

Now, the firſt condition of the towns and the people, as I remarked in my former book, muſt have been a ſcene of freedom or of happineſs. And, in this condition, corporations and boroughs were actually known, and of importance ¶. The ſecond era of their hiſtory was deformed with miſeries. And it was from this wretchedneſs, to the felicities of their former independence, that the charters of community were to contribute to reſtore them.

Thus the concluſions of the biographer of Charles V. are to be conſidered as fallacious, under every aſpect in

* LL. Wiſigoth, Burgund. Alaman. Baivvar. Ripuar. Saxon. Longobard. &c. See the Collections of Lindenbrogius, and Georgiſch. See alſo LL. Anglo-Saxon. in the editions of Lambard and Wilkins.

† Hiſt. of Naples, book iii. iv. v. vi. &c.

‡ Prolegomena, ad Hiſt. Goth. || L'Eſprit des Loix, liv. 28.

§ View of Society in Europe, in its Progreſs from Rudeneſs to Refinement, book ii.

¶ Domes-day Book, in the quotations of Dr. Brady, and other writers.

which

which they can viewed. But, as this ſubject of the towns is highly curious and intereſting, I proceed to throw out ſome additional obſervations concerning it.

After towns became oppreſſed, it would be natural for them to look back, with anxiety and regret, to the liberties which had been wreſted from them. And a conſequence of this anxiety and regret, would be an attempt to recover them. Theſe things were really to happen. Towns in ſubjection to the ſovereign and to the nobles, were to give *fines* or payments, to receive anew, in part or in whole, the privileges they had loſt. In the records, accordingly, of all the feudal ſtates, the purchaſe of privileges formerly enjoyed, and claims of ancient rights and liberties were frequent; and they will be allowed to be effectual proofs of the condition of the towns and the people, both in their ſtates of happineſs and calamity.

The men of Coventry gave xx marks to Henry II. to have his confirmation of their liberties. For their liberties x marks were given to Richard I. by the burgeſſes of Carliſle; and cc marks, on the ſame account, were preſented at his exchequer by the burgeſſes of York. Of theſe, and a variety of other fines by towns, for the recovery and ſecurity of their liberties, there are evidences in the records, which are publiſhed by Mr. Madox*.

A claim of liberties, which had belonged to his anceſtors in times beyond all memory, was made by Gilbert de Gaunt, in the ſeventh year of Edward I. †. In the days of Richard II. the Earl of Richmond complained, that the officers of the crown had invaded his county, and exerciſed exactions and tyranny upon his men and his tenants. He enumerated theſe exactions, and deſcribed this tyranny. He aſſerted and claimed their *ancient* liberties; and, his pleas being ſuſtained, a charter was iſſued from the crown in acknowledgment of their freedom, and exempting them from all oppreſſions ‡.

* Hiſt. of the Exchequer, vol. i. ch. xi.

† Clamat liberam chaceam, et liberam warrennam, et infaugtheof in omnibus dominicis terris ſuis in Swaldale, emend. Aſſiſae panis et cerviſiae fract. et furcas in Rithe et Swaldale *ab antiquo.* Et dicit, quod ipſe et omnes anteceſſores ſui, *a tempore quo non extat memoria*, ſemper uſi ſunt hujuſmodi libertatibus, abſque aliqua temporis interruptione. Et in hoc ponit ſe ſuper patriam. *Clameum Gilberti de Gaunt, ap Regiſtr. Honoris de Richmond, p.* 91.

‡ Public Papers, No. IV.

What

What thoſe *liberties* were, which the towns, as corporations, or bodies politic, had poſſeſſed in old times, it is difficult to ſay with entire preciſion. In general, however, the names of them are to be found *. And, with regard to the *oppreſſions* which the ſovereign and the nobles exerciſed upon the towns and the people, within their reſpective and peculiar juriſdictions, they are alſo to be enumerated †. Now, the charters of community to towns, were expreſsly to revive thoſe *liberties*, and to take away thoſe *oppreſſions* ‡. The towns and the people, therefore, had been firſt free; they were then oppreſſed; and they were next to return to freedom again.

In revolving the force of theſe particulars by themſelves, and in their union, it is impoſſible not to perceive, that the towns and boroughs, in their earlieſt condition, were not only free and happy, but even conſequential and conſiderable. To what era then, but to this, are we to look for the riſe of the parliamentary towns and boroughs? they could not poſſibly obtain this privilege in the ſecond condition of their hiſtory; for then they were miſerable and under oppreſſion. And, if they had not obtained it till after the grant of charters of community, in the twelfth and thirteenth centuries, the great and the little circumſtances, which muſt have attended a tranſaction ſo memorable, could not poſſibly have been ſwept away ſo completely, as that no memorial whatever ſhould be left, to decide irrefragably their exiſtence.

It accords, too, with this way of thinking, that parliamentary boroughs might loſe their privilege of repreſentation by diſuſe, and from poverty. For they were to

* They ſeem, in a great meaſure, to be contained in what is meant by 'ſoca, ſaca, tol, theam, infangthef, et unfangthef.' See LL. Anglo-Saxon. ap. Wilkins, p. 202. and the Gloſſaries.

† Theſe, in general, are expreſſed by the terms 'theolonium, leſta-'gium, paſſagium, paagium, pontagium, ſtallagium, leva, et talla-'gium.' See the Gloſſaries.

‡ A charter of franchiſe or community by King John, ſpeaks in this manner. 'Sciatis nos conceſſiſſe et præſenti carta noſtra confirmaſſe bur-'genſibus noſtris de Gernemua quod habeant burgum de Gernemua ad 'feodi firmam in perpetuum, et quod burgus ille ſit liber burgus in per-'petuum, et habeant *ſocam et ſacam, tol et theam*, et *infangthef, et utfang-'thef*, et quod ipſi burgenſes, per totam terram noſtram, et per omnes 'portus maris, ſint quieti de *theolonco, leſtagio, paſſagio, paagio, pontagio, 'ſtallagio, et de leva et de Danegeld, et omni alia conſuetudine.*' *Dr. Brady, Treatiſe of Engliſh Boroughs, Appendix, p. 8.*

decline,

decline, when the towns were in their ſtate of oppreſſion. It accords with it, alſo, that they might riſe up from oppreſſion, and that they might lay claim to the right and the honour which they had exerciſed and ſuſtained of old. And, in reality, do we not learn from records and hiſtory, that Barnſtaple, after having been a parliamentary borough in the Anglo-Saxon times, neglected to ſend its burgeſſes to parliament, till the days of Edward III. when it claimed its ancient privilege, and was inveſted in it *? And do we not know, that Agmondeſham, Wendover, and Great Marlow, after an interruption of four hundred years, made a claim of their ancient parliamentary rights, and were found by the commons and the king to be parliamentary boroughs from *preſcription* †?

To theſe remarks I might add, the poſitive and concluſive evidence which ſupports the high *antiquity of parliamentary* BOROUGHS in England. But I hold the matter of this chapter to be ſufficient to juſtify what I have ſaid in my former book. And it ſuits not the views with which I now write, and the narrow limits within which I muſt confine myſelf, to enter upon a ſubject ſo vaſt in itſelf, and ſo infinitely perplexed by the paſſions and ability of the advocates for the crown, and for the people.

* Hody, Hiſt. of Councils and Parliaments, p. 375. 376.
† Brown Willis, ap. Lyttelton's Hiſt. of Henry II. vol. iii. p. 389.

CHAPTER XXVIII*.

The Antiquity of the Repreſentation of the People. The Principle of this Repreſentation.

THE ancient and modern hiſtorians of Scotland, neglect very much all conſtitutional matters. The ſtate-papers and the public archives of this nation, have never been collected. The ancient laws, which have been preſerved and publiſhed, are not only few and inconſiderable, but have not been preſented to the ſtudious, in any perfect form. Theſe diſadvantages have apolo-

* See Book I. p. 52.

gized for what I have hitherto done; and they are to plead for what I am yet to do.

In the conſideration and importance of the *people* of old, I find an inducement of the ſtrongeſt kind to believe their *repreſentation*; and I deſpair not to produce, from legal and hiſtorical monuments, a ſufficient evidence of the propriety of this opinion.

A charter, of a religious endowment at Dunfermline, by Malcolm III. makes an expreſs mention of the *parliamentary* powers of the *people**. But what, it is to be aſked, was the rank of the people in this age? Before the days of James I. the inferior tenants of the crown were the *leſſer* barons, and they appeared perſonally in our parliaments. Before the invention, therefore, of *the knights of the ſhire*, when the *people* are recorded as a part of the parliament, the alluſion muſt be made to *the burgeſſes*. It is, accordingly, to the *parliamentary* powers of the *burgeſſes*, that this charter has appealed; and, in fact, before it ſpeaks of the *people*, it had enumerated the *higher* orders of the legiſlature.

The preamble to the acts of William the Lion, who began to reign in the year 1165, is in theſe words.

'Statuta, ſive aſſiſae regis Wilhelmi, regis Scotiae, 'factae apud Perth, coram epiſcopis, abbatibus, baroni-'bus, et aliis *probis hominibus* terrae ſuae.'

In the body of his laws there are theſe notices.

'Aſſiſa regis Wilhelmi, facta apud Perth, quam epiſ-'copi, abbates, comites, barones, thani et *tota communi-'tas regni*, tenere firmiter juraverunt†.'

'Item, rex Wilhelmus ſtatuit apud Sconam, per *com-'mune concilium regni ſui* ‡.'

In the ſtatutes of Alexander II. the paſſages which follow deſerve to be conſidered.

'Statuit dominus rex Alexander, illuſtris rex Scotiae, 'de concilio, et aſſenſu venerabilium patrum, epiſcopo-'rum, abbatum, comitum, baronum, ac *proborum homi-'num ſuorum Scotiae* §.'

'Statuit rex per conſilium et aſſenſum *totius communi-tatis ſuae* ‖.'

The preamble to the laws of Robert I. is in theſe words.

* Public Papers, No. V.
† Cap. 7. ‡ Cap. 9. § Cap. 2. ‖ Cap. 4.

'In

'In Dei nomine, Amen. Robertus, Dei gratia, Rex 'Scotorum, anno regni ſui decimo tertio, die Dominica 'proxima, cum continuatione dierum, poſt feſtum Sanc- 'ti Andreae Apoſtoli, ſubſequentium: Reſidens apud 'Sconam in plano parliamento ſuo tento ibidem; habi- 'toque ſolemni tractatu, cum epiſcopis, abbatibus, prio- 'ribus, comitibus, baronibus, et aliis magnatibus, de '*communitate totius regni* ibidem congregatis, ſuper variis 'et arduis negotiis, ipſum et regnum ſuum tangentibus, 'atque in futuro tangere valentibus: ad honorem Dei, 'et ſanctae matris eccleſiae, et ad emendationem terrae 'ſuae, tuitionem populi, et ad pacem terrae ſuae 'manutenendam, et affirmandam. De *communi con-* '*cilio*, et expreſſo conſenſu, omnium praelatorum, et 'libere tenentium praedictorum ac *totius communitatis* 'praedictae; ordinavit, condidit, et ſtabilivit ſtatuta infra 'ſcripta; ab omnibus per totum regnum ſuum perpetuo, 'et inviolabiliter obſervanda *.'

When the prelates, the nobles, and the tenants *in capite*, or the leſſer barons, are expreſſed as parts of the legiſlative body, the meaning of the terms employed are obvious. But who were the *probi homines* in the laws of William and Alexander? They muſt point to another branch of the legiſlature. Thus, when John Baliol told Edward I. that he *could not*, and *dared not* expreſs any ſentiment which concerned his kingdom, 'without 'conſulting his *people*,' *inconſultis probis hominibus regni ſui* †, he meant ſomething more than the ſanction of the prelates, the nobles, and the tenants *in capite*. The extenſiveneſs of his expreſſion is crampt and confined when applied only to theſe. He muſt have alluded to the *repreſentatives* of the *people*, and to their parliamentary power, as well as to the legiſlative authority of the prelates, the nobles, and the tenants *in capite*. Now, 'theſe 'repreſentatives of the people' muſt have been *the burgeſſes*; for there were yet no 'knights of the ſhire.' And thus the expreſſion of Baliol, in its extenſiveneſs, is eaſily comprehended, and had a reference to the *whole kingdom*.

The terms *commune concilium*, in the laws of William and Robert, expreſſing the *nationality* of parliaments, confirm this concluſion, and receive a confirmation from it in their turn.

* Prim. Stat. Rob. Primi.

† Ryley, Placit. Parl. p. 159. an. 1293.

The

The ſame thing is to be ſaid of the words *tota communitas* in the laws of William, Alexander, and Robert. And as to the expreſſion *magnates* in thoſe of the laſt, in an alluſion to the repreſentation of the *people*, it was, by no means, miſapplied. For, in England, it appears exactly in the ſame ſenſe; and we know, both from Rymer and Petyt, that, in that kingdom, *noble*, *moſt noble*, *moſt illuſtrious*, *moſt gracious ſeigniors*, *monſeigniors*, and *ſires*, were appellations of the *commons* *.

But, to give a weight to theſe particulars, and a deciſion to this ſubject, I appeal to an actual and complete evidence, not only of the *repreſentation* of the *people*, but of a *grant* of *money* by them in the reign of William the Lion.

'Hoc anno † Rex Scotiae Willelmus *magnum* tenuit 'concilium apud Strivelyn, ubi interfuit frater ejus comes 'David de Huntyngdon, paulo poſt feſtum Sancti 'Michaëlis; ubi, petito ab obtimatibus auxilio, pro pe'cunia regi Angliae ſolvenda, promiſerunt ſe daturos de'cem mille marcas, praeter *burgenſes regni*, *qui ſex millia* 'marcarum *promiſerunt*, praeter eccleſias, ſuper quas nihil 'imponere praeſumpſerunt ‡.'

Here there is mention of the three eſtates of the realm, the nobles ||, the *burgeſſes* and the clergy.

Abercromby, who is remarkable for mean prejudices, and the want of penetration, has affirmed, that Robert I. introduced the *burgeſſes* into our parliaments; and that this is evident from an indenture 'drawn up between 'him and the earls, barons, freeholders, and commu'nities of *burghs*, anno 1326, in a parliament holden at 'Cambuſkenneth, by which, upon conſiderations therein 'narrated, the King obtained a grant, during his life, 'of the tenth penny of all the farms and revenues be'longing to the laity of the kingdom, both within and 'without the burghs §.'

With Abercromby Dr. Robertſon has concurred in expreſs terms; and it appears, that they muſt have con-

* Antiq. Power and Decay of Parliaments, p. 17. The Antient Rights of the Commons of England aſſerted, p. 94. 95.

† 1211.

‡ Fordun, Scotichronicon, lib. viii. cap. 83.

|| Under the general name of Nobles, old writers often include the greater and the leſſer barons, or the whole body of the temporal tenants *in capite*, who had a title to appear in parliament.

§ Atchievements of the Scots Nation, vol. i. p. 635.

ſidered

ſidered this indenture as a rule or evidence the moſt powerful †. Yet, what is particularly unfortunate, this indenture does not ſay that the *burgeſſes* were now, for the firſt time, introduced into our parliaments. It does not mention them as a new or a recent inſtitution. We cannot gather from it that any alteration was then made or intended. It enumerates the *burgeſſes*, not as a novelty, but as an eſtabliſhed branch of the legiſlature ‡. To this indenture, therefore, I may be permitted to appeal in my turn; and I conſider it as contributing to the general ſtrength of my argument, by illuſtrating the *antiquity* of the repreſentation of the *boroughs*.

Prior, for a ſhort period, to the year 1326, the fanciful era from which monarchical writers date the repreſentation of the towns, there was a league between Scotland and France, ſtill to be ſeen in a roll of the Tower, in which the *towns* and *boroughs* appear as a branch of the parliament, under the deſcription of 'univerſitates 'et communitates *civitatum* et *villarum* regni Scotiae ||.' Now, it will hardly be contended that theſe terms are expreſſive either of the prelates, the barons, or the ſimple tenants *in capite*, whom the monarchical writers hold out at this time as the only parts of the legiſlature.

In the year 1320, it is likewiſe to be obſerved, that the celebrated letter from the Parliament of Scotland to the Pope, complaining of the King of England, enumerates, as its conſtituent branches, the 'comites, ba-'rones, libere tenentes, et *tota communitas* Scotiae §.' Now the *boroughs* are here moſt peculiarly pointed out by the *tota communitas*, as the earls, the great barons, and the freeholders, or the leſſer barons, are poſitively referred to.

Thus, too, in place of the expreſſion *tota communitas*, the term *burgenſes* is actually employed in the laws of Robert II. For, when the three eſtates ſwear in his reign to ſupport the laws, and the earl of Carrick, as governour of the realm, it is ſaid, 'Omnes et ſinguli 'praelati, praelatorum procuratores, et alii de clero, 'comites, barones, et *burgenſes* qui interfuerunt ad ſer-'vanda omnia, et ſingula praedicta, quantum in eis 'fuerit, et ad manutenendum, fortificandum, et ſufful-

† Hiſt. of Scotland, vol. i. p. 66. ‡ Public Papers, No. VI.
|| Petyt, Antient Rights of the Commons, p. 83. See farther Prynne, Eccleſiaſt. Juriſdiction, tom. iii. p. 539, 540.
§ Anderſon, Diplomat. Scot. tab. 52.

'ciendum

'ciendum dominium de Carrik ſub rege, ad legis regi-
'men, et completionem juſtitiae conſtitutum, juramenta
'ſua, tactis ſacroſanctis evangeliis, perſonaliter praeſti-
'terunt †.'

But farther, from the words *communitates burgorum*, in the parliamentary recital of the indenture of Robert I. ‡, from the words *tres communitates* in the laws of David II. ‖, and from the words 'ex deliberato conſilio, et 'cum conſenſu et aſſenſu prelatorum, comitum, et ba-'ronum, ceterorumque procerum et nobilium, ac om-'nium aliorum de *tribus ſtatibus*, ſive *comunitatibus* totius 'regni,' in a ſtatute of Robert II. §, a general and ſtriking argument, in confirmation of what I have remarked, is to be deduced. For, in theſe paſſages, which refer to times when it is univerſally allowed that the *burgeſſes* were repreſented, the word *communitas* is applied to the *boroughs* as one of the *three eſtates*. We may therefore reaſon back from this evidence to ancient times, and conclude, that in theſe the term *communitas* was alſo expreſſive of the ſame meaning; and this the more eſpecially, when the explanation contended for has ſo many concurring circumſtances to juſtify, to ſupport, and to eſtabliſh its exactneſs and propriety.

The *repreſentation* of the boroughs being thus to be found in the oldeſt ſtatutes of our princes, and in authentic monuments of hiſtory, and appearing in them as an eſtabliſhed inſtitution, it is to be ſaid, that it loſes itſelf in the darkneſs of a remote antiquity.

But, though the antiquity of the repreſentation of the boroughs does not, I think, admit of any doubt; yet the *rule* or *principle* of this right is concealed in time and in obſcurity.

We know, indeed, with certainty, that the holding *in capite* was the rule in the reign of Robert III. and that, to this day, it is the *royal* boroughs alone which elect repreſentatives. The preamble to the laws of Robert III. is in theſe words. 'Parliamentum Domini noſtri Roberti 'Tertii, Scotorum regis illuſtriſſimi, tentum apud Sco-'nam die Lunae, viceſimo primo Februarii; anno gra-'tiae milleſimo quadringenteſimo, regni ſui undecimo, 'cum continuatione dierum ſubſequentium; ſummonitis 'et ibidem vocatis, more ſolito, epiſcopis, prioribus,

† LL. Rob. II. cap. 17.
‖ LL. Dav. II. cap. 41.
‡ See Public Papers, No. VI.
§ Public Papers, No. VII.

'ducibus,

'ducibus, comitibus, baronibus, libere tenentibus, et 'BURGENSIBUS, *qui de domino noſtro rege tenent* IN 'CAPITE*.'

This authority, however, ſo deciſive for the era to which it refers, and ſo well illuſtrated by our ſubſequent hiſtory, is not a demonſtration, that the holding *in capite* was the principle of the repreſentation of the boroughs, from the *earlieſt* times. And I cannot but think, that ſome principle, more general and extenſive in its operation, had preceded this diſtinction. But a thick cloud covers this ſubject from obſervation.

I may, notwithſtanding, be allowed to remark, that I can ſee nothing abſurd in the ſuppoſition, that many boroughs, held under the *nobles*, might be of importance enough to entitle them to ſend repreſentatives to parliament in very ancient times. The democratical genius of the early eras of our hiſtory, gives encouragement to this idea. It is ſupported by the cuſtoms of England, where boroughs were repreſented, which held not *in capite*. And it receives a weight from the conſideration of thoſe principles of freedom and enlargement which acted, of old, in the production of the political condition of the county of Sutherland; a condition which appears now to be ſo ſingular.

* Act. Rob. III. ap. Skene, p. 62.

CHAPTER XXIX†.

The Lords of the Articles. The Freedom of the Scottiſh Conſtitution.

'AS far back,' ſays the hiſtoriographer of Scotland, 'as our records enable us to trace the conſtitu-'tion of our parliaments, we find a committee, diſtin-'guiſhed by the name of *Lords of Articles* ‡.'

The moſt ancient era of the appearance of this council, or committee, has been conceived to be the reign of David II. And, if the old ſtatutes of our Kings, which remain, are allowed to be records, and this will hardly

† See Book I. p. 53.
‡ Dr. Robertſon, Hiſt. of Scotland, vol. i. p. 68.

be doubted, we can trace the conſtitution of our parliaments to a remoter age †. It is alſo to be conceived, that this *committee* was not diſtinguiſhed by the name of 'Lords of Articles,' till the reign of James IV. ‡.

'It is extremely probable,' continues this author, 'that the King once had the ſole right of nominating 'the Lords of Articles.' It appears, from authentic records, that a parliament was appointed to be held 'March 12, 1566, and that the Lords of Articles were 'choſen, and met on the 7th, five days before the aſſembling of parliament. If they could be regularly elected 'ſo long before the meeting of parliament, it is natural 'to conclude, that the prince alone poſſeſſed the right of 'electing them. There are two different accounts of 'the manner of their election at that time, one by Mary 'herſelf, in a letter to the Archbiſhop of Glaſgow. *We, 'accompanied with our nobility for the time, paſs to the tal-'buith of Edinburgh, for holding of our parliament, on 'the 7th day of this inſtant, and elected the Lords Articu-'lars.* If we explain theſe words according to ſtrict 'grammar, we muſt conclude, that the Queen herſelf 'elected them. It is, however, more probable, that 'Mary meant to ſay, that the nobles then preſent with 'her, viz. her privy counſellors and others, elected the 'Lords of Articles. The other account is Lord Ruthven's, who expreſsly affirms that the Queen herſelf 'elected them. Whether we embrace the one, or the 'other of theſe opinions, is of no conſequence. If the 'privy counſellors and nobles attending the court, had 'a right to elect the Lords of Articles, it was equally 'advantageous to the crown, as if the prince had had 'the ſole nomination of them ‖.'

The nomination of this committee appears from the acts of James I. The preface to his laws is in theſe words. 'Acta parliamenti Jacobi primi regis Scotorum, 'tenti apud Perth xxvi. die menſis Maii, anno Domini 'milleſimo quadringenteſimo vigeſimo quarto, et regni 'ſui xix. Convocatis *tribus* regni *ſtatibus*, ibidem congregatis *electae* fuerunt *certae perſonae* ad *articulos* datos 'per dominum regem determinandos, data caeteris licentia recedendi §.'

† See Chapter 28. ‡ See the Statute-book.
‖ Hiſt. of Scotland, vol. i. p. 69, 70. § Black Acts, p. 1.

Inſtead

Inſtead then, of having been elected by the King, or by his dependents, the Lords of the Articles were choſen in parliament They were a committee of the three eſtates, not the creatures of the prerogative; and they received articles from the King, which they were to examine and to prepare for the parliament. A conſciouſneſs of the evidence of this preamble to the acts of James I. has occaſioned its omiſſion in the later editions of the Scots ſtatutes; and I am preſently to point out other omiſſions, which cannot be cenſured as too mean or diſhonourable; it being their intention to deſtroy the parliamentary expreſſions of the importance of the people.

The teſtimony of this preamble is confirmed by a ſtatute of James III. in which power is entruſted 'be the 'hail *thre eſtates* to *certane perſonis* underwritten, to com-'moun and conclude upone the maters efter follow-'and ||.' For the council of the articles are thus deſcribed as a committee of parliament.

With regard to the two opinions explained by Dr. Robertſon, as expreſſive of the tenet, that the Lords of the Articles were elected or managed by the crown, their foundations are ſo vague and equivocal, that they illuſtrate his wiſh, without confirming his concluſion. And, indeed, if they had been expreſs and definitive, they could only be evidences with reſpect to the times to which they point; and no general inference could be drawn from them.

'The Lords of the Articles,' it is farther urged, by the hiſtoriographer of Scotland, 'not only directed the 'whole proceedings of parliament, but poſſeſſed a nega-'tive before debate §.'

From the conſtitution of the council of articles, as illuſtrated by the acts of James I. and James III. it is yet obvious, that it was merely their intention to prepare buſineſs for parliament. The ſubjects into which they were to inquire, were ſubmitted to them; and the reſult of their deliberations was reported in full parliament,

|| Black Acts, fol. 50. This paſſage is alſo omitted in the common editions of the Statutes, in edit. 1631, and 1682. An induſtrious writer has obſerved, that the Black Acts contain 178 Laws, which are omitted or caſtrated in the poſterior editions of the Statutes. Anderſon, Preface to his Collections, p. ix.

§ Hiſt. of Scotland, vol. i. p. 69.

and examined and voted there. But other teſtimonies, to evince theſe particulars, are to be produced.

In the acts of parliament of the reign of James IV. there are theſe paſſages.

'As tuiching the renewing and confirmatioun to be 'maid, of the conſideratioun and allyance of France, 'and in likewyſe of Denmark and Hiſpanzie, it is thocht 'expedient, be the *Lordis of the Articles*, that they deſyre 'to purches and obtene ſic freindſchippis, liberteis, and 'fredomes, for the *gude publique of this realme*, and prof-'feit of the cours of merchandice, and ſic thingis as ſal 'be ſene proffitabill be the Lordis of the Kingis ſecreit 'counſall: *That thairfoir the* BODY *of the* PARLIAMENT '*hes committed* POWER to the chancellar and ſecret coun-'ſall, to mak the inſtructiouns, and aviſe ſic deſyris, as 'thay ſall think expedient for the *gude of the King, his* 'realme, and liegis, quhilkis ſal be done to the King, 'and in the name of the *hail body of his parliament.*

'Item, becauſe the *Lordis of the Articlis* underſtandis, 'that it is rycht, expedient, and neidful, that an am-'baxat be ſend to the King of Denmark for the renew-'ing of the allyance, and confirmatioun of the confe-'deratioun betuix our Souerane Lord, his realme, and 'liegis, and the ſaid King of Denmark, his realme, and 'ſubjectis of the ſamin; and to remove all ſtranenes, 'and diſpleſour conſavit be ony prince for ony cauſe 'bypaſt, and for the perſonage; it is aviſit and thocht 'expedient, that thair be ſend a lord, a knycht, a clerk, 'to the number of xx perſounis, and for thair expenſis 'to have the ſoume of thre hundreth pundis, to be raſit 'of the thre eſtatis, that is to ſay, ane hundreth of ilk 'eſtate.

'Item, tuiching the article of the Kingis propertie for 'the honorabill ſuſtentatioun and halding of his hous, 'according to his eſtate and honour, quhilk may not be 'failzeit without greit derogatioun of his nobill eſtate; 'it is conſiderit be the ſaidis *Lordis of the Articles* that 'ſen all the lordis ſpirituall and temporall, and uthers, 'his true liegis, ſould, above all ſingulare and particular 'profficit, deſire to prefer the nobill eſtate of his excel-'lence, lyke as it was done in the tyme of his maiſt nobill 'progenitouris, of gude mynde: *Heirfore* it is thought 'expedient, needfull, and reſinabill, and als *ſtatute and* 'ordainit *in this preſent* PARLIAMENT, that full deroga-

'tioun,

'tioun, caſſatioun, and annullatioun, be maid of all 'giftis, donationnes, inſeftments, few-fermes, feis, ly-'ferentis givin be his hieneſs to quatſumever perſoun, 'ſen the day of his coronatioun †.'

Theſe proofs explain fully the uſe of the Lords of the Articles in our conſtitution. They were not inſtruments of tyranny, but a council for facilitating affairs. Articles were ſubmitted to their ſcrutiny; and they judged not finally, but propoſed their overtures to parliament. The parliament was to approve theſe, or to reject them; and the object of the Lords of the Articles, while they deliberated together, was the emolument of the Kingdom, and not the power of the Prince.

From the election of the Lords of the Articles out of the three eſtates, they were to know that oppoſition and thoſe attentions of intereſt, which were to tend to the general advantage. The eſtates continued, in this repreſentation, to be a check to one another. And the tranſactions of this committee being reviewed in parliament, the freedom of the conſtitution was guarded and ſecured by a method the moſt effectual.

The hiſtoriographer of Scotland proceeds to expreſs himſelf in this manner, on the ſubject of the Lords of the Articles.

'They came afterwards to be elected by the par-'liament, and conſiſted of an equal number out of each 'eſtate, and moſt commonly of eight temporal, and 'eight ſpiritual lords, of eight repreſentatives of bur-'roughs, and of eight great officers of the crown. Of 'this body, the eight eccleſiaſtics, together with the offi-'cers of the crown, were entirely at the King's devo-'tion, and it was ſcarce poſſible, that the choice could 'fall on ſuch temporal lords and burgeſſes, as would 'unite in oppoſition to his meaſures. Capable, either 'of influencing their election, or of gaining them when 'elected, the King commonly found the Lords of the 'Articles no leſs obſequious to his will than his own 'privy-council, and, by means of his authority with 'them, he could put a negative upon his parliament be-'fore debate, as well as after it; and, what may ſeem 'altogether incredible, the moſt limited prince in Europe

† Black Acts, fol. 84, 85.
The firſt and ſecond of theſe paragraphs are omitted in the editions of the ſtatutes to which I formerly referred.

'actually poſſeſſed, in one inſtance, a prerogative, which 'the moſt abſolute could never attain †.'

From what I have urged, it is clear, that, of old, the eſtates of the kingdom, not the ſovereign, elected the council of the articles. And, it is worthy of obſervation, that if this privilege had been ever in the ſovereign, he would not have parted with it, to beſtow it on the parliament. Compliances of this kind are very uncommon; and, when no evidence of any force is to be found, to ſupport a ſuppoſition ſo whimſical, it muſt be imputed to an extreme want of political diſcernment, or the violent attachment to an hypotheſis.

It is to be conceived, that the repreſentation of the eſtates, in the committee of articles was generally *equal*, from the earlieſt times of its hiſtory. There ſeem, indeed, to have been variations in the number of the repreſentatives as a *body*. But it was the rule, that an equal number of repreſentatives ſhould be choſen from *each* eſtate. It is even ordained, by a ſtatute of James VI. 'that the number of the Lordes of Artickles be 'equal in *ilk* eſtaite; and that the feweſt number of 'everie eſtaite be ſex, and, the maiſt number ten ‡.' Now, this method of procedure was evidently calculated for the public good, and the purpoſes of freedom.

The ſuperaddition of the 'officers of the crown,' or rather of the 'officers of the ſtate,' to the Lords of the Articles, was a late invention, and an attack upon their independence. It is obvious, therefore, even from this circumſtance, that the Lords of the Articles had not always been ſo ſubmiſſive as Dr. Robertſon has ſuppoſed.

As to my Lords the biſhops, I will not be ſo bold as to ſpeak their apology. They were, doubtleſs, the moſt rotten part of our conſtitution. But, whatever dependence and venality may be imputed to them, it is, by no means, equitable to infer in the Lords of the Articles a general and uniform corruption.

In the inſtitution, and in the election of the Lords of the Articles, there appear the marks of legality, candor, and juſtice. No arts, which had been uſed to overawe or direct them in ancient times, have been traced or diſcovered. And, indeed, to gain or to corrupt this coun-

† Hiſt. of Scotland, vol. i. p. 70. ‡ Parl. 1587. cap. 37.

cil,

cil, while it was difficult in itſelf, was to acquire nothing. For its overtures being debatable in parliament, the deliberations and authority of the three eſtates were to overturn all improprieties in their behaviour and conduct.

It was not till a late period in our hiſtory, that any attempts were even made to counteract their virtue and integrity. Theſe might firſt be thought of in Mary's reign; but, I conceive, they were chiefly foſtered by a weak or an artful ſtatute † of James VI. If we believe this ſtatute itſelf, it was intended to prevent in parliament the ſpirit of frivolous diſputation. It may, notwithſtanding, have covered a more dangerous purpoſe. With whatever deſign, however, it might be framed, this is certain, that it contributed to ſuggeſt that negative before debate, of which the monarchical writers are ſo full, and which was to diſtinguiſh the dominations of Charles I. and Charles II. High notions of prerogative, indeed, had been founded in the reign of James VI.; but they received a memorable correction; and the power and freedom of parliaments were proclaimed in language the moſt reſpectful and deciſive §.

Thus,

† 'Our Soveraine Lorde, and his eſtaites in this preſent parliament, 'having conſidered the great faſcherie and inconvenience of ſindrie par-'liamentes, throw preſenting of a confuſed multitude of doubtful and 'informal articles and ſupplicationes: for remeid theirof in time cuming, 'ſtatutis and ordainis, that, quhenever the parliament is appoynted and 'ordained to be proclamed, there ſall ane convention be appoynted, of 'foure of every eſtaite, to meete twentie dayes before the parliament, to 'receive all maner of articles and ſupplicationes concerning general lawes, 'or tuitching particular parties: Quhilkis articles and ſupplicationes ſall 'be delivered to the clerke of regiſter, and be him preſented to the per-'ſones of the eſtaites, to be conſidered be them; to the effect that thinges 'reaſonable and neceſſary may be formallie maid and preſented in an 'buik to the Lordes of the Articles, in the parliament time; and all im-'pertinent, frivolous, and improper maters be rejected; and, that na ar-'tickle or ſupplication, wantand a ſpecial title, or unſubſcribed be the 'preſenter, ſall be red or anſwered in that convention or parliament fol-'lowing the ſame: it is alwayes provided, that his Majeſtie may preſent 'ſik articles as he thinkis gude, concerning himſelf, or the common weill 'of the realme, at all times when he thinkis expedient.' *Stat. James* VI. *cap.* 218.

Even from this law it is to be remarked, that the Lords of the Articles had not that conſequence which ſo many writers confer upon them. They were in uſe to receive articles indiſcriminately from all members of parliament; and thoſe preſented by the crown are to be viewed in the light of ſpeeches from the throne.

§ 'The King's Majeſtie, conſiddering the honour and the authoritie of 'his ſupreeme court of parliament, continued paſt *all memory of man*, unto

Thus, the corruption of the Lords of the Articles was late in making its appearance, and did not continue long. It was to characteriſe thoſe reigns which immediately preceded the extinction of this council. And, what confirms all I have ſaid, when the convention of eſtates, at the Revolution, was to complain of the Lords of the Articles as a grievance, it was indirectly to acknowledge the propriety of the council itſelf, and to urge only the invaſion which had been made upon the *freedom* of its election †.

But, while theſe remarks are more than ſufficient for the end to which they are applied, it will not eſcape the attention of the reader, that the mixed form of polity which eſtabliſhed itſelf in Scotland, as well as in the other nations of Europe, oppoſes an irrefragable argument againſt the prerogative for which the hiſtoriographer of Scotland has contended. There are againſt it poſitive and definitive evidences; and there are againſt it the whole rules and fabric of our government §.

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'thir days, as conſtitute upon the *free votes* of the three eſtaites of this 'auncient kingdome. Be quhom the ſame, under God, hes ever bene 'uphalden, rebellious, and traiterous ſubjectes puniſhed, the gude and 'faithfull preſerved and meinteined, and the lawes and actes of parlia-'ment (be quhilkis all men are governed) maid and eſtabliſhed. And 'finding the power, dignitie, and authoritie of the ſaid court of parlia-'ment, of lait zeires called in ſum doubt, at leaſt ſum curiouſlie travelling, 'to have introduced ſum innovation theiranent, his Majeſties firme will 'and mind alwaies being as it is zit; That the honour, authoritie, and 'dignitie of his ſaidis three eſtaites, ſall ſtand and continew in the awin 'integritie, according to the auncient and lovabill cuſtome bygane, with-'out ony alteration or diminution. Therefoir, it is ſtatute and ordained, 'be our ſaid Soveraine Lord, and his ſaidis three eſtaites, in this preſent 'parliament, that nane of his lieges and ſubjectes preſume, or tak upon 'hand, to impugne the dignitie, and the authoritie of the ſaidis three 'eſtaites, or to ſeek or procure the innovation or diminution of power 'and authoritie of the ſaid three eſtaites, or ony of them in time cum-'ming, under the paine of treaſon.' *Stat. James* VI. *cap.* 130.

† 'The eſtates of the kingdom of Scotland, do repreſent, that the 'committee of parliament, called the Articles, is a great grievance to 'the nation, and that there ought to be no committee of parliament, but 'ſuch as are *freely* choſen by the *eſtates*, to prepare motions and overtures 'that are firſt made in the houſe.' *Acts of the Eſtates*, *an.* 1689, *cap.* 17. In conformity to this ſenſe, King William aboliſhed this council. 'The 'King and Queen's Majeſties, with advice and conſent of the eſtates of 'the parliament, do hereby diſcharge and abrogate, in all time coming, 'the aforeſaid committee of parliament, called the Articles; and further 'caſs, annul, and reſcind, 1ſt Act, 3d Seſſion, parl. 1ſt, ch. ii. anent the 'way and manner of election of the Lords of the Articles, with all other 'acts, laws, and conſtitutions eſtabliſhing the ſaid committee, or Lords 'of Articles.' *Acts of William and Mary*, *an.* 1690, *cap.* 3.

§ Amidſt the many marks of freedom which diſtinguiſh the Scottiſh conſtitution, it is curious to obſerve, that our Kings of old were to apply,

by

The general deſcriptions, therefore, and the ſtrong concluſions of Dr. Robertſon, are not to be admitted, and appear without any ſolid ſupport of reaſon or learning. After humbling our Kings into dependence and poverty, he gives them a prerogative that is without bounds. He ſeems now in conſpiracy againſt the crown, and now againſt the people.

I have ſhown, in other portions of this work, that the Kings of Scotland could not be ſo contemptible as he has repreſented them; and I controvert in this place, the abſolute power he would impute to them. The truth is oftener to be found in the middle than in extremities. It is ſo inſult our Kings, to conſider them as pageants. It is to inſult our nation, to conſider them as deſpots. And, to expoſe them ſometimes in the one view, and ſometimes in the other, is to do ſomething more than to ſport with our hiſtory.

A propenſity to embelliſh other men's notions, without conſidering enough on what authority they are founded, how ſtrong they are in themſelves, and what inferences are to be deduced from them, is a conſtant and a teeming ſource of miſtake to this ſhowy and elegant hiſtorian. It is thence that he holds out many a frail opinion to glitter and to periſh. To collect theſe cannot be intereſting to me. But, though I could not ſubmit to make a chronicle of his errors, I have been induced to wipe away, and to diſpel, in part, the ſtains and the gloom they would fix upon our ſtory, and to illuſtrate, by examples, the reſpect which is due to his authority. And, while I perform this ſervice to truth, to liberty, and to our national antiquities, I diſdain to be unjuſt, and am far from being inſenſible to the peculiarities of his merit.

It muſt be a pain, I know, to many of his readers, that the moſt widely amuſing of all our writers, is not,

by way of *petition*, to their ſubjects. In the acts of James I. there is this paſſage. 'Dominus rex obtinuit per modum *requeſtæ* a prælatis et baronibus, quod non removebunt pro anno futuro colonos [illegible] 'bandos a 'terris ſuis nondum aliis aſſedatis, niſi domini illarum terrarum illas terras 'capiant ad uſus ſuos proprios.' *Black Acts, fol.* 19. 'It is thocht ſpeidful,' ſays an act of James II. formerly noticed §, 'that th King mak '*requeiſt* to certane of the greit burrowis of the land that ar of ony mycht 'to mak cartis of weir.' *Black Acts, fol.* 38. Theſe paſſages, as well as ſeveral others to which I have appealed in the courſe of this work, are ſhamefully omitted in the later editions of the ſtatute-book.

§ Page 65.

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at the ſame time, the beſt informed, and the moſt able. They muſt regret, that a work which forms ſo general, ſo eaſy, and ſo pleaſing a paſtime, is not alſo fraught with inſtruction, and loaded with wiſdom. And, that the author, who is deſervedly ſo eminent in all the arts of courtly and popular compoſition, is not likewiſe remarkable for thoſe ſuperior qualities, which alone can ſecure and eſtabliſh admiration, the power of thought, and the originality of ſentiment.

PUB-

PUBLIC PAPERS.

Referred to in the Foregoing Treatiſe.

No. I. Page 62.

Charter from Malcolm IV. to Walter the Steward of Scotland †.

MALCOLMUS, Rex Scotorum, epiſcopis, abbatibus, comitibus, baronibus, juſtitiis, vicecomitibus, praepoſitis, miniſtris, cunctiſque aliis probis hominibus, clericis et laicis, Francis et Anglis, Scotis et Galovidienſibus, totius terrae ſuae, tam praeſentibus quam futuris, ſalutem: Notum ſit omnibus quod priuſquam arma ſuſcepi, conceſſi, et hac mea carta confirmavi haereditarie Waltero, filio Allani, Dapifero meo, et haeredibus ſuis in feodo et haereditate, ſeneſchalliam meam, tenendam ſibi et haeredibus ſuis, de me et haeredibus meis, ita bene et plenarie, ſicut rex David ſeneſchalliam ſuam ei dedit et conceſſit; praeterea confirmo donationem illam, quam rex David, avus meus, ei dedit, ſcilicet de terris de Reinfrew, Paiſleth, Pullock, Tulloch, Kerkert, Le Drip, Egiſham, Lochynoc et Innerwick, Inchenan, Haſtenden, Legerwood et Brichenſyde, cum omnibus iſtarum terrarum pertinentiis; et in unoquoque burgo et dominio meo, unam plenariam toftam et cum unaquoque tofta, viginti acras terrae, ad hoſpitia ſibi in eo facienda; quare volo ut idem Walterus, et haeredes ſui teneant, in capite, omnia praenominata, tam illa, quae ipſe habuit ex donatione regis David, quam illa, quae habuit ex mea donatione: Reddendo mihi et haeredibus meis, de illo feodo, ſervitium quinque militum. Apud caſtrum de Roxburgh, in feſto Sancti Johannis Baptiſtae, anno regis noſtri quinto. His teſtibus,

Erneſto epiſcop. St. Andrae.
Herberto epiſc. de Glaſgow.
Johanne abbate de Keleow.

† From the collections of Sir James Balfour of Kinnaird, ap. Crawfurd, Hiſt. of the Family of Stewart, p. 2. 3.

Will.

Will abbate de Melroſs.
Waltero, cancellario.
Willielmo et David fratribus regis.
Comite Coſpatrick.
Comite Duncano.
Ricardo de Morvil.
Gilberto de Umphravil.
Roberto de Bruſs.
Radolpho de Souls.
Philippo de Colvill.
Willielmo de Sumervilla.
Hugone Riddel.
Davide Olifard.
Waldeno, Filio comitis Coſpatric.
Willielmo de Morvil.
Balduino de la Mar.
Liolpho, filio Macus.

No. II. Page 78.

An EXTRACT from DOMESDAY-BOOK,

Terra Roberti de Stadford,

In Warendon Hundred.

ROBERTUS de Stadford tenet in Stantone 3 virgatas terrae, et Hugo de eo. Terra eſt 3 carucatarum. In dominio eſt una, et 3 ſervi, et 6 villani, et 5 bordarii, cum 2 carucatis. Ibi 3 acrae prati, *valuit* 10 ſolidos, *modo* 30 ſolidos. *Aileva* libere tenuit, tempore regis Edwardi.

Terra Roberti de Oilgi,

In Cailea Hundred.

Robertus de Oilgi tenet 1 hidam, et 1 virgatam terrae in Wicha; et Rogerius de eo. Terra eſt 10 carucaturum. In dominio ſunt 3 carucatae, et 7 ſervi, et 7 villani, et 3 bordarii, cum 4 carucatis. Ibi 10 acrae prati, ſilva ii quarentenis longa, et 6 quarentenis lata, *valuit* 40 ſolidos, *modo* 100 ſolidos. Azor libere tenuit, tempore regis Edwardi.

In

In Sutone Hundred.

Idem tenet de Roberto 1 hidam in Tèwarde. Terra eſt 3 carucatarum ed dimid. In dominio eſt una et 2 ſervi et 7 villani habent 2 carucatas et dimid. Ibi molinum de 30 denariis, *valuit* 10 ſolidos, *modo* 30 ſolidos.

Idem Robertus tenet dimid. hidam, et quintam partem 1 hidae in Preſtone. Terra eſt 1 carucatae et dimid.

Terra Roberti de Vecy,

In Rodewelle Hundred.

Robertus de Vecy tenet 1 hidam in Badebroc. Terra eſt 2 carucatarum; 1 eſt in dominio, et 4 bordarii habent aliam carucatam, *valuit* 5 ſolidos, *modo* 10 ſolidos. Ailric libere tenuit, tempore regis Edwardi. *Ap. Tranſcript of Domeſday-book, ſo far as it concerns Northamptonſhire, in Morton's Natural Hiſtory of Northamptonſhire, p.* 26.

No. III. Page 108.

The Oath of a Knight.

I. YE ſall fortifie and defend the Chriſtian religion, and Chriſt's holy evangell, preſently publikely preached in this realm, at the uttermoſt of your power.

II. Ye ſall be leyel and trew to our ſoverane Lord the King's Majeſtie, to all ordure of chivalrie, and to the noble office of arms.

III. Ye ſall fortifie and defend juſtice at your power, and that without fear or favour to any partie.

IV. Ye ſall never flie from your ſoverane Lord the King's Majeſtie, nor fra his hienes lieutenant in time of melle.

V. Ye ſall defend your native cuntrie from all alienars and ſtrangers.

VI. Ye ſall defend the juſt action and queruelles of all ladies of honor, of all true and friendles widowes, orphelins, and maids of good fame.

VII. Ye ſall do diligence quhaire ever ye hair thair are any murtherars, traytors or maiſterfull thieves and ravaris

varis that oppreſſeth his Majeſtes ledges and poore, to bring them to the lawes or juſtices with diligence at all your power.

VIII. Ye ſall mainteine and uphold the whole eſtaites of chivalrie with horſe, harnes, and other knightly abviliaments, and ſall help and ſuccor all thame of the ſamen ordure if they ſtand in need.

IX. Ye ſall acquire and ſeek to have the knowledge and underſtanding of all the articles and points requiſite for you to know, conteined in the books of chevalrie.

X. Ye will promes to obſerve, keep, obey, and fulfill all the premiſſes to the uttermoſt of your power, ſo help you God, be your owen hand, and be God himſelf. *Ap. Selden, Titles of Honour, part* ii. *chap.* vii. *See alſo the works of Drummond of Hawthornden, p.* 138.

No. IV. Page 121.

Pro Duce Britanniae de Theolonio non Praeſtando.

REX univerſis et ſingulis, ad quos, &c. ſalutem. Querelam, cariſſimi fratris noſtri Johannis Ducis Britanniae et Comitis Richemundiae recepimus, continentem quod, licet ipſe et omnes homines et tenentes ſui de comitatu Richemundiae quieti eſſe debeant, idemque comes, et omes alii comites Richemundiae, et eorum homines et tenentes de comitatu praedicto a tempore cujus contrarii memoria non exiſtit, ſemper hactenus quieti eſſe conſueverant de theolonio, pontagio, muragio, pavagio, paſſagio, laſtagio, ſtallagio, kaiagio, et picagio, de bonis ſuis praeſtandis, per totum regnum noſtrum Angliae, idem tamen comes, ac homines et tenentes ſui de comitatu praedicto, ſaepius, ante haec tempora, pro praeſtatione hujuſmodi theolonii, pontagii, muragii, pavagii, paſſagii, laſtagii, ſtallagii, kaiagii, et picagii infra regnum noſtrum praedictum, de bonis et rebus ſuis diſtricti fuerunt, et indies diſtringuntur minus juſte, in ipſius comitis dampnum non modicum et gravamen, et ſtatus hominum et tenentium ſuorum praedictorum oppreſſionem manifeſtam, ſuper quo idem comes nobis humiliter ſupplicavit ut ſibi, ac hominibus et tenentibus ſuis praedictis, de remedio congruo providere velimus,

velimus, nos nolentes ipſum comitum, aut homines et tenentes ſuos praedictos, indebiti onerari, vobis praecipimus quod, ſi praefatus comes ac homines et tenentes ſui praedicti quieti eſſe debeant, idemque comes, et omnes alii comites praedicti ac eorum homines et tenentes de comitatu praedicto, a tempore praedicto ſemper hactenus quieti eſſe conſueverint de hujuſmodi theolonio, pontagio, muragio, pavagio, paſſagio, laſtagio, ſtallagio, kaiagio, et picagio, de bonis ſuis praeſtandis, per totum regnum noſtrum Angliae, ut praedictum eſt, tunc hujuſmodi diſtrictionibus eis de caetero inferendis, penitus deſiſtentes, praefatum comitem, ac homines et tenentes ſuos praedictos, de hujuſmodi theolonio, pontagio, muragio, pavagio, paſſagio laſtagio, ſtallagio, kaiagio, et picagio, vobis de bonis et rebus ſuis praeſtandis, quietos, eſſe permittatis, prout inde quieti eſſe debeant, idemque comes et omnes alii comites praedicti, et eorum homines et tenentes de comitatu praedicto, a tempore praedicto ſemper hactenus rationabiliter quieti eſſe conſueverunt.

Teſte Rege apud Weſtmonaſterium decimo octavo die Junii. *Et erat patens. Ap. Appendix to the Honour of Richmond, p.* 198, 199.

No. V. Page 124.

Carta Fundationis Coenob. de Dunfermelinge.

IN nomine Sanctae Trinitatis, ego Malcolmus, Dei gratia, Scottorum Baſileus, authoritate regia, ac poteſtate, Margaretae Reginae, uxoris meae epiſcoporum, comitum, baronumque regni mei confirmatione, et teſtimonio, clero etiam, *adquieſcenteque populo.* Sciant praeſentes et futuri me fundaſſe Abbaciam in monte infirmorum, in honorem Dei Omnipotentis, et S. individuae Trinitatis, pro ſalute animae meae, et omnium anteceſſorum meorum, et pro ſalute animae Reginae Margaretae, uxoris meae, et omnium ſucceſſorum meorum. Conceſſi etiam, et hac charta mea confirmavi, praedictae abbathiae omnes terras et villas de Parduſin, Pitnaurcha, Pittecorthin, Petfactachin, Lavar, Bolgin, et ſhiram de Kircaladunt, et Innereſc minorem, cum tota ſchira de Fothriſſe, et Muſſelburge, cum omnibus ſuis pertinentiis,

tam

tam in capellis et decimis, aliiſque oblationibus, quam in omnibus aliis ad eas terras, villas, et ſchyras juſte ſpectantibus, ita libere, ſicut aliquis rex aliquas Eleemoſinas unquam dedit vel contulit, ab initio mundi, ad hanc diem Teſtibus Ivo Kelledeorum Abbate, Mackduffe Comite, Duncano Comite, Araldo Comite, Neis filio Willielmi Marleſwain, apud Edinburge. *Exſcript. ab Autogr. per Jac. Balfoure Eq. Aurat. et baronem Lyon. ap. Monaſt. Anglican. vol.* ii. *p.* 1054.

No. VI. Page 128.

Indenture between Robert I. *and his Subjects.*

HOC eſt tranſcriptum indenturae concordatae et affirmatae inter Dominum Robertum, Dei gratia, Regem Scottorum illuſtrem, et comites, barones, liberetenentes, communitates burgorum, ac univerſam communitatem totius regni, magno ſigillo regni et ſigillis magnatum et communitatum praedictorum alternatim ſigillatum in haec verba. Praeſens indentura teſtatur, quod, quintodecimo menſis Julii, anno ab incarnatione Domini M. CCC. viceſimo ſexto, tenente plenum parliamentum ſuum apud Cambuſkenneth feneriſſimo Principe domino Roberto, Dei gratia, Rege Scottorum illuſtri, convenientibus ibidem comitibus, baronibus, burgenſibus et caeteris omnibus liberetenentibus regni ſui, propoſitum erat per eundem Dominum Regem, quod terrae et redditus, qui ad coronam ſuam antiquitus pertinere ſolebant, per diverſas donationes et tranſlationes, occaſione guerrae factas, ſic fuerant diminuti quod ſtatui ſuo congruentem ſuſtentationem non habuerit, abſque intolerabili onere et gravamine plebis ſuae: unde inſtanter petiit ab eiſdem, quod cum tam in ſe, quam in ſuis, pro eorum omnium libertate recuperanda et ſalvanda, multa ſuſtinuiſſet incommoda, placerit eis, ex ſua debita gratitudine, modum et viam invenire per quem juxta ſtatus ſui decentiam ad populi ſui minus gravamen congrue poſſet ſuſtentari. Qui omnes et ſinguli comites, barones, burgenſes, et liberetenentes, tam infra libertates quam extra, de Domino Rege, vel quibuſcunque aliis dominis infra Regnum, mediate vel immediate tenentes, cujuſcunque

cunque fuerint conditionis, conſiderantes et fatentes praemiſſa Domini Regis motiva eſſe vera, ac quamplura alia, ſuis temporibus, eis per eum commoda accreviſſe, ſuamque petitionem eſſe rationabilem atque juſtam, habito ſuper praemiſſis commune ac diligenti tractatu, unanimiter gratanter et benevole conceſſerunt et dederunt Domino ſuo Regi ſupradicto annuatim ad terminos Sancti Martini et Pentecoſtes, proportionaliter, pro toto tempore vitae dicti Regis, decimum denarium omnium firmarum et reddituum ſuorum, tam de terris ſuis dominicis et wardis, quam de caeteris terris ſuis quibuſcunque infra libertates et extra, ex tam infra burgos quam extra, juxta antiquam extentam terrarum et reddituum tempore bonae memoriae Domini Alexandri, Dei gratia Regis Scottorum illuſtris ultimo defuncti, pro miniſteriis ejus fideliter faciend. excepta tantummodo deſtructione guerrae; in quo caſu fiet decidentia de decimo denario praeconceſſo, ſecundum quantitatem firmae, quae occaſione praedicta, de terris et redditibus praedictis, levari non poterint, prout per inquiſitionem per vicecomitem loci fideliter faciendam poterit reperiri: ita quod omnes hujuſmodi denarii, in uſum et utilitatem dicti Domini Regis, ſine remiſſione quacunque, cuicunque facienda, totaliter committantur: et ſi donationem vel remiſſionem fecerit de hujuſmodi denariis antequam in Cameram Regis deferantur et plenarie perſolvantur, praeſens conceſſio nulla ſit, ſed omni careat robore firmitatis. Et quia quidem magnates regni tales vendicant libertates, quod miniſtri Regis infra terras ſuas miniſtrare non poterint, per quod ſolutio Domino Regi facienda forſan poterit retardari: omnes et ſinguli hujuſmodi libertates vendicantes, Domino Regi manuceperunt, portiones ipſos et tenentes ſuos et contingentes, per miniſtros ſuos, miniſtris Regis, ſtatutis terminis plene facere perſolvi: Quod ſi non fecerint, vicecomites Regis quilibet in ſuo vicecomitatu, tenementa hujuſmodi libertatum, regia auctoritate, per hujuſmodi ſolutione facienda diſtringant. Dominus vero Rex, gratitudinem et benevolentiam populi ſui placide ponderans et attendens, eiſdem gratioſe conceſſit, quod a feſto Sancti Martini proximo futuro, primo viz. termino ſolutionis faciendae, collectas aliquas non imponet, priſas ſeu cariagia non capiet, niſi itinerando ſeu tranſeundo per regnum, more predeceſſoris ſui Alexandri regis ſupra dicti: pro quibus priſis et cariagiis plena fiat ſolutio ſuper unguem: et quod omnes

groſſae providentiae Regis cum earum cariagiis, fiant totaliter ſine priſis. Et quod miniſtri Regis, pro omnibus rebus ad hujuſmodi groſſas providentias faciendas ſecundum commune fore patriae, in manu ſolvant ſine dilatione. Caeterum conſenſum eſt et concordatum, inter Dominum Regem et communitatem regni ſui, quod, ipſo Rege mortuo, ſtatim ceſſit conceſſio decimi denarii ſupradicti. Ita tamen quod de terminis praeteritis ante mortem ipſius Domini Regis plenarie ſatisfiat. Et quod nec per praemiſſa, vel aliquod praemiſſorum, poſt hujuſmodi conceſſionem finitam, haeredibus dicti Domini Regis, aut communitati regni ſui aliquatenus fiat praejudicium, ſed quod omnia in eundem ſtatum redeant et permaneant, in quo erant ante diem praeſentis conceſſionis. In quorum omnium teſtimonium, uni parti hujus indenturae, penes dictos comites, barones, burgenſes, et liberetenentes reſidenti, appoſitum eſt commune ſigillum regni: alteri vero parti, penes Dominum Regem remanenti, ſigillo comitum, baronum, et aliorum majorum liberetenentium, una cum communibus ſigillis burgorum regni, nomine ſuo et totius communitatis concorditer ſunt appenſa. Dat. die, anno et loco ſupradictis. Et hoc tranſcriptum penes magnates et communitates praedictos et eorum ſucceſſores, remanſurum, ſigillo regni conſignatur, in teſtimonium et memoriam futurorum. Datum apud Edinburgum, in parliamento Domini Regis tento ibidem, ſecunda Dominica quadrageſimae, cum continuatione dierum ſequentium, anno gratiae M. CCC. viceſimo ſeptimo. *From the Collections in the library of the Advocates at Edinburgh, ap. Hiſtorical Law Tracts.*

No. VII. Page 128.

The Ordination or ſtatute made at Scone, on the 4th day of April, in the Third year of Robert II.

IN Dei nomine, Amen, anno ab incarnatione ejuſdem mileſimo trecenteſimo ſeptuageſimo tertio, et regni regis Roberti Secundi anno tertio, menſis Aprilis die quarto, praefatus rex Robertus Secundus in parliamento ſuo apud Sconam, ac cupiens incertitudinem ſucceſſionis in pleriſque regnis, et partibus contingentem retroactis temporibus viare pro poſſe, et ei pro ſe et ſuis maxime futuris temporibus obviare, ex deliberato concilio et cum conſenſu et aſſenſu praelatorum comitum et baronum, cete-

ceterorumque procerum et nobilium, ac omnium aliorum, de tribus ſtatibus ſive communitatibus totius regni congregatorum ibidem, declaravit, ordinavit, et ſtatuit, quod filii ipſius regis ex ſua prima et ſecunda uxoribus nunc geniti, et eorum heredes, ſucceſſive ſuccedent ipſi regi in regnum, et in jus regnandi per modum infra ſcriptum, et ſub forma, et conditionibus infra ſcriptis. Videlicet, quod dominus Johannes primogenitus ipſius regis comes de Carricke ac ſeneſchallus Scotiae pro cujus ſucceſſionis jure in parliamento immediate praecedenti plene fuerat declaratum et heredes ſui poſt mortem ipſius ſibi in regnum, et in jus regnandi ſuccedent, ac ipſis domino Johanne et heredibus deficientibus forſitan, quod abſit, dominus Robertus comes de Fife, et de Monteith filius ipſius Domini Regis ex prima uxore ſecundo genitus et haeredes ſui in regnum et in jus regnandi ſucceſſive et immediate ſuccedent, et ipſis domino Roberto, et haeredibus ſuis hujuſmodi, deficientibus etiam fortaſſe, quod abſit, dominus Alexander dominus de Badenoch filius ipſius Domini Regis ex eadem uxore tertio genitus, et heredes ſui tantum in regnum, et in jus regnandi, poſt mortem ipſorum ſimili modo ſucceſſive et immediate ſuccedent; ipſis vero domino Alexandro et heredibus ſuis praefatis, ſimiliter forſitan quod abſit, deficientibus, dominus David comes de Strathern filius ipſius Domini Regis ex ſecunda uxore genitus, et haeredes ſui eiſdem ſic deficientibus, ex toto integrum et in jus regnandi ſimiliter ſucceſſive et immediate ſuccedent; ipſo vero David et haeredibus ſuis predictis ſimiliter forte deficientibus, Walterus filius ipſius Domini Regis frater germanus ipſius domini David et haeredes ipſius in regnum et in jus regni ſimili modo ſuccedent. Praedictis autem quinque fratribus eorum haeredibus ab ipſis deſcendentibus deficientibus forſitan ſimiliter et ex toto, quod abſit, veri et legitimi haeredes de ſanguine et parentela regali, ex tunc in regnum et in jus regnandi ſuccedent. Quibus ſic ſtatutis, ordinatis, declaratis, et actis, omnes prelati comites et barones ac omnes de tribus ſtatibus ſive comunitatibus totius regni in ipſo parliamento ibidem propter haec et alia congregati, prefatas declarationem, ordinationem, et ſtatutum, ratificaverunt et approbaverunt pro ſe et ſuis haeredibus perpetuis et futuris temporibus duraturis. Et nihilominus infraſcripti videlicet praelati domini Willielmus Sancti Andreae, Michael Dunkelden; Alexander Aberdonen; Patricius Brechanen;

nen; Alexander Muravien; Andreas Dumblanen; Alexander Roſſen; et Malcolmus Catenen; eccleſiarum epiſcopi praeſentibus, et apertis ſacroſanctis Dei evangeliis, ac infra ſcripti comites, barones et nobiles, primo videlicet ipſi filii regis ſeniores, et provectae aetatis, domini, ſcilt. Johanes Robertus, Alexander, necnon Dominus Willielmus de Douglaſſe, Georgius de Dunbar Marchiae, Johanes de Dunbar Moraviae, comites Thomas de Haya conſtabularius Scotiae, Dominus Willielmus de Keith mareſcallus Scotiae, Jacobus de Lindſey dominus de Crawford, Archibaldus de Douglas dominus Galvidiae, Jacobus Douglas dominus de Dalkeith, Robertus de Erſkine, Hugo de Eglintonne, Duncanus de Wallays, David de Graham, Walterus de Halyburtonne, Willielmus de Diſhingtoune, Alanus de Erſkin, Alanus de Jacobus de Frazer, Alexander Frazer, Robertus ſenechallus de Innermaith, Rogerus de Mortuo Mari, David filius Walteri, Patricius de Grahame, Andreas de Vallibus, Johanes Wallays, Johanes Maxwell, Andreas Campbell, Willielmus de Cunningham filius, et Johanes Strachawin milites, Johanes Kennedy, et Alexander de Cockburn, ſcutiferi, eiſdem ſacroſanctis evangeliis, et eorum quilibet manu-tactis corporaliter juraverunt, quod prefatas declarationes, ordinationes, et ſtatuta pro ſe et pro eorum haeredibus inviolabiliter obſervabunt et ab aliis pro viribus perpetuo facient obſervari. Conſequenter vero et immediate, tota mulitudine cleri et populi in eccleſia de Scona ante magnum altare propter hoc ſpecialiter convocata, ac prefata declaratione, ordinatione, et ſtatuto ſic juratis alta et publica voce, eis expoſitis, quilibet levata manu per modum fidei-dationis in ſignum univerſalis conſenſus totius cleri et populi exprimebat et manifeſtabat publice ſuum conſenſum pariter et aſſenſum. In quorum omnium teſtimonium prefatus dominus rex preſenti ſcripto ſive inſtrumento, ſuum magnum precepit apponi ſigillum, et ad majorem evidentiam, et ſecuritatem pleniorem, omnes epiſcopi, comites, barones, et nobiles ſupradicti eidem inſtrumento ſua ſigilla fecerunt apponi, gratia teſtimonii et ad perpetuam memoriam futurorum: acta fuerunt haec apud Sconam in pleno parliamento Domini Regis, predictis anno, menſe, et die ſuperius annotatis. *Ap. Brady, Tracts concerning the old Engliſh Hiſtory, Appendix, p.* 46. 47.

APPENDIX II.

LETTERS.

LETTER I.

Dr. Stuart to James Cummyng, Esq. Secretary to the Society of Antiquaries at Edinburgh.

LETTER II.

Dr. Stuart to the Right Honourable the Earl of Buchan, President of the Society of Antiquaries at Edinburgh.

LETTER III.

The Right Honourable the Earl of Buchan to Dr. Stuart.

LETTER I.

To James Cummyng, Eſq. Secretary to the Society of Antiquaries at Edinburgh.

SIR,

I BEG to have the honour of tranſmitting to you, for the library of the Society of Antiquaries at Edinburgh, a copy of my Hiſtory of Scotland, from the Eſtabliſhment of the Reformation, till the Death of Queen Mary. While I am ambitious of depoſiting my work in ſo conſpicuous a repoſitory, I am ſenſible that I may thus call to it the particular examination of many ingenious and learned men. It becomes me, therefore, to obſerve, that I would have abſtained induſtriouſly from this meaſure, if I were not conſcious of having directed my narration by the pureſt views of public utility. I am conſequently in a diſpoſition to attend with candour to whatever can be objected to my book. The hiſtorian who can perſiſt in his miſtakes, departs from his duty, and violates the character he has aſſumed. And, if there is a ſituation where miſtakes ought invariably and ſcrupulouſly to be corrected, and where a violation of the hiſtorical rules is altogether inexcuſable, it is in the caſe of a Queen, who has ſuffered in her honour by miſrepreſentations, and who with ſtrong and real claims to integrity, has been held out to reproach and infamy. It will not, I believe, be objected to me, that I have fallen into this ſituation; but whatever my errors are, I ſhall give way to a commendable pride, and my eagerneſs to renounce them ſhall be in proportion to their importance, and to the danger of their tendency. And I deſire it to be remembered, that I make this declaration with the greater propriety and juſtice, as I differ moſt eſſentially in my ſentiments from a living hiſtorian*, who has treated the ſubject which has attracted my attention, and who enjoys the diſtinction of being a member of our ſociety. If it ſhall be found that I have loſt my way, and wandered in the mazy labyrinth of hoſtile

* William Robertſon, Doctor of Divinity, and Hiſtoriographer for Scotland.

factions, I will, notwithſtanding, be ready to catch the clue that ought to have guided my ſteps. If it ſhall be demonſtrated that Mary was not ſo perfect and ſo innocent as I have repreſented her, I will yield to the controlling power of evidence and argument. Though I ſhall weep over the misfortunes, the frailties, and the crimes of this beautiful princeſs, I will yet pay my devotions to truth, and ſubmit to the law of the victor. While you communicate to our ſociety theſe expreſſions of my ſincerity, you will readily perceive that they are due from me to a body of men, who, from their birth, their ſituation, and their ſtudies, are the moſt able to judge of the intricate and problematical parts of the ſubject I have undertaken. It is with extreme ſatisfaction, at the ſame time, that I embrace the opportunity which is now offered to me of applauding the public and generous cares that have brought them together. I have the honour to be, with great reſpect,

SIR,

Your moſt obedient,

and moſt humble ſervant,

LONDON,
April 10, 1782.

GILBERT STUART.

LETTER II.

To the Right Honourable the Earl of Buchan, Preſident of the Society of Antiquaries at Edinburgh.

MY LORD,

I HAVE to expreſs to your Lordſhip the extreme pleaſure with which I received your communication on the ſubject of my Hiſtory; and to obſerve, that I ſhall always entertain a lively remembrance of the reception it met with from our ſociety. I fear, indeed, that the language employed by our ſecretary, in his return to my letter to him, was much beyond any merits of mine. But while I have the ſatisfaction to make theſe acknowledgments, I am neceſſarily engaged to diſcharge a more diſagreeable taſk. As my letter * was of a public nature, and as it included a call upon Dr. Robertſon to defend or to renounce his opinions concerning the

* Letter I.

honour

honour and character of Queen Mary, I cannot, with propriety, diſmiſs a new edition of my book, without taking ſome notice of his behaviour.

The period of ſtory which I have ventured to undertake, had occupied long the pains and labour of the hiſtoriographer for Scotland*; and having preſſed againſt Mr. Goodal, with a polite aſperity†, he opened a controverſy of great curioſity and moment‡. Though I read with care what he had written, I was not convinced by his narration and arguments; and my conſultation of records and authorities, leading me to very oppoſite concluſions, I thought it would be no diſſervice to my country, if I ſhould preſume to lay before it the reſult of my ſtudies. My book, accordingly, was publiſhed; and, ſtruck with the wildneſs of his ſentiments, I caſt the gauntlet at his feet. My challenge was given in terms which appeared to me to be not only candid, but generous§. I did not invite him to a conteſt of wit and ſharpneſs; but to a calm hiſtorical diſcuſſion. I ſolicited his notice to a diſpute to which he was actually a party, and in which he was bound to perſevere. To have acknowledged his errors would have been an honour to him; for it would have expreſſed the juſtice which he owed to truth, and to an injured princeſs; and have argued the reſpect which was due from him to the public and to himſelf. On the other hand, to have confuted the facts and the reaſonings which I had brought forward, if that had been a matter within his power, while it would have been no diſcredit to his abilities, would have given a completeneſs to his narrative. But he induſtriouſly neglected theſe lines of conduct; and has deemed it prudent to entruſt his reputation to a ſullen ſilence. He followed exactly the track which he ought to have avoided with anxiety; and he has expoſed his hiſtoric faith and credibility, to every ſuſpicion that is moſt improper. He provoked a conflict which he was unable to ſuſtain. He turned away with averſion from

* See the Preface to his Hiſtory of Scotland.

† See his Diſſertation concerning the Murder of King Henry, and the Genuineneſs of Mary's Letters to Bothwel.

‡ See 'An Inquiry, hiſtorical and critical, into the evidence againſt 'Mary Queen of Scots; and an Examination of the Hiſtories of Dr. 'Robertſon and Mr. Hume, with reſpect to that evidence.' See alſo, 'Remarks upon the Hiſtory of Scotland.'

§ See Letter I.

the

the liſts. He forgot that there is a point of honour which ought to be as dear to an author as to a gentleman. He gave himſelf airs of ſuperiority, and trembled before the ſound of the trumpet. A demeanor ſo giddy, ſo abſurd, and ſo ignoble, affects me with ſhame, upon his account. Fortune may delude me with ſmiles, or fill me with hopes that are deſtined to periſh; but I ſhould be wretched, indeed, if ſhe could force me into any ſituation where I could not act like a man.

Though he choſe not, however, to diſcover himſelf as my adverſary in an open manner, he was ſincerely diſpoſed to do an injury to my book; and a party was formed againſt it at Edinburgh, whoſe declamations were violent in no common degree. It is known over Scotland, that our hiſtoriographer has been zealous to erect a ſort of literary deſpotiſm; and that in this attempt he has been aſſiduouſly aſſiſted by numerous aſſociates. This choſen band, ſmiling to one another, and calling themſelves men of letters, decide magiſterially upon writings and compoſitions of every kind. They vainly fancy, that they can diſpenſe oblivion or immortality. In the opinion of this aſſociation I was guilty of a mortal ſin, by differing in my way of thinking from their maſter. My book was aſſailed by every epithet of contempt and cenſure. The charges of preſumption, ignorance, and folly, were diſſeminated with the moſt painful induſtry. Their malice was in proportion to their ſervility. They thought to wreck my reputation on the tide of their obloquy *. They ſeemed like gladiators

* In the midſt of their abuſive career, I reminded them of what was right, by giving a check to one of their inventions. In the Edinburgh Courant, [Auguſt 12, 1782,] I ſubmitted the following caution and notice to the public.

"Advertiſement by the Author of the Hiſtory of Scotland, from the Eſtabliſhment of the Reformation till the Death of Queen Mary.

London, 5th Auguſt, 1782.

"It has this moment come to my knowledge, that a report is induſtriouſly propagated at Edinburgh, that I am the author of a paper * publiſhed in a late pamphlet, in which a formal compariſon is drawn between

* The publication containing this paper is entitled, 'Critical Obſervations concerning the Scottiſh Hiſtorians Hume, Stuart, and Robertſon; including an idea of the reign of Mary Queen of Scots, as a portion of hiſtory; ſpecimens of the hiſtories of this princeſs, by Dr. Stuart and Dr. Robertſon; and a comparative view of the merits of theſe hiſtorians; with a literary picture of Dr. Robertſon in a contraſted oppoſition with the celebrated Mr. Hume.' 8vo.

diators ſurrounding the throne of a deſpot. But their calumny and clamour did not terrify me. I foreſaw the riſing ſtorm, and was willing to encounter it. Its moſt envenomed fury is now ſpent, and I am unhurt and ſafe. That I may do juſtice, however, to myſelf, and repreſs, at the ſame time, a confederacy, which is a diſgrace to Scotland, and which has retarded the progreſs of our learning, I take the liberty to record their ſhame. Letters cannot flouriſh long, but under the form of a republic; and as I publiſhed ſome years ago an antidote to the political dogmas of our hiſtoriographer, I now deride openly, his literary domination. Without giving way to the ſpirit of vanity, or to what is ſtill more abſurd, to the ſpirit of prophecy, I may, perhaps, be permitted to affirm, that the entire integrity with which my book is written, will command and engage the thanks and attention of my country, when the noiſe of my enemies ſhall no longer be heard; when the black

tween my hiſtory of Queen Mary, and that formerly written by Principal Robertſon, and in which the preference, as an hiſtorian, is freely beſtowed upon me. I am at the ſame time informed, that, upon this report, acrimonious cenſures have been founded, and are applied to me, with a contempt of every ſcruple. It is fit, and even neceſſary, that I take notice of this very improper and unwarrantable behaviour, and that I throw away from me, with ſcorn, all the blame which has been imputed to me by theſe artifices. I therefore embrace this opportunity, publicly and ſolemnly to declare, *that I am* NOT *the author of the paper in queſtion*; and, this being the caſe, I deſire it to be obſerved, that the indelicate cenſures, and the paſſionate complaints to which it has given riſe, on the ſuppoſition of its being written by me, ought to fall inſtantly to the ground. It would, I imagine, be a far more honourable conduct in my adverſaries, if, inſtead of oppoſing me by inventions and calumnies, they would take the field in an open and honeſt manner. They ſeem to be proud of their ſtrength, and yet they are afraid to make uſe of it. Though I have been anxious to find the truth, and have endeavoured to direct myſelf, in the ſearch of it, with an exemplary impartiality, I may yet have failed in diſcovering it. But I am, notwithſtanding, as I have already intimated in my introduction to my book, in a proper humour to liſten, with entire candour, to any objections they may offer. If they act the part which becomes them, and confute my facts and reaſonings, I ſhall even be forward to announce their victory; for it is the indiſpenſible duty of an hiſtorian to abandon his miſtakes, when they are pointed out to him. If they ſhall continue, however, in their uſual temper and habits, they will afford me an advantage which I neither ſeek for nor wiſh, but which it may be expedient for me to explain in a full and complete manner. And as their want of liberality has given occaſion to the preſent declaration, I take the liberty to admoniſh them, that it is extorted from me, not ſo much by any opinion I entertain of their conſequence, as by the ſenſe of that juſtice which I owe to the public, to my friends, and to myſelf.

GILBERT STUART."

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cloud of prejudice againſt an amiable princeſs, ſhall be broken and diſſolved; and when I ſhall be inſenſible alike to cenſure and to praiſe.

Nor am I deſtitute of real and flattering authorities, with which I might oppoſe the petulant immodeſty of Dr. Robertſon and his followers. If it were neceſſary, I might urge the approbation with which my Hiſtory has been peruſed by perſons of high conſideration and learning. But what is more intereſting to me as the hiſtorian of a beautiful Queen, many of her own ſex have approved my reſearches, have been convinced by me of her innocence, and have revolved her misfortunes, in my narration of them, with anguiſh and tears. If, therefore, the united ſtrength of my adverſaries had been able to ſend ſome arrows to glance againſt my ſide, I would not have wanted conſolation. I would have found it in the bright eye of many a female reader. That eye has already wept the balſam that can cure me of far deeper wounds.

But while I mention the weak and malicious impropriety of Dr. Robertſon's behaviour, and the perſiſting and inſidious vehemence of his adherents, I muſt obſerve, that I have been accuſed publicly, of a deſire to build my reputation upon the ruins of his. To this deſire, however, I am altogether a ſtranger; and the lamentation of his friends, while it makes them deplore, by implication, the decline of his fame, and look with ſorrow to the laurels that are withering upon his brow, is utterly falſe with regard to me. I was not ſtung with envy; I was not incited by rivalſhip. His admirers might have known, that our modes of thinking and writing are very different; and I had committed the charge of my reputation to other performances beſide my Hiſtory of the Queen of Scots. If too, I had been governed by the motives they impute to me, I would not probably have abſtained from dwelling with ſome degree of fondneſs upon the errors which I could not fail to remark in the courſe of my attention to his narrative of the reign of Mary. I have notes of theſe to the amount of many hundreds; and my neglect to throw them into a treatiſe, does not ſurely argue an inordinate inclination in me to divert myſelf with his underſtanding. The keenneſs of his retainers does not ſerve him. It compels me to tell them, that I have behaved to him

not merely with candour, but even with compaſſion. Nor do I think that any intelligent perſon can read the obſervations I have made concerning his account of the Scottiſh government, without perceiving with an obvious diſtinctneſs, that I was animated by no idea of rivalſhip. Wherever I touched upon his argument, I found it to be without ſtrength; and if I had not acted under principles of patriotiſm, what could it have availed me to contend with weakneſs, or to give battle to infirmity *? I felt not that pride which riſes in conflict with Monteſquieu, or with Hume; and I could aſk as my reward, no ovation, and no triumph.

I know, my Lord, how difficult it is for a man to ſpeak or to write concerning himſelf; and I ſhall be infinitely ſorry, if any expreſſion has eſcaped from me which I ought not to have adopted. I may, indeed, have no title to be vain; but I cannot ſubmit to be ſervile; and if hoſtile and angry individuals are to faſten rudely upon my name, I deſerve not, I think, to be cenſured as either unjuſt or cruel, if I rebuke their littleneſs, and point, with ſcorn, to reſentments which they cannot gratify, and to arts which they dare not avow. At any rate, I am happy to have an opportunity to profeſs to your lordſhip the ſincerity of my attachment, and the cordiality of my wiſhes for the advancement of thoſe public and national purpoſes, which employ ſo honourably your anxieties and toil. I am, with the moſt perfect reſpect,

My Lord,
Your lordſhip's moſt humble,
and moſt obedient ſervant,
GILBERT STUART.

LONDON,
April 10, 1783.

* See Appendix I. Book ii. Chapters vi. vii. ix. xiii. xiv. xxi. xxiii. xxiv. xxvii. xxviii. xxix.

LETTER III.

To Gilbert Stuart, Eſq. Doctor of Laws, and Honorary Member of the Society of Antiquaries of Scotland.

Edinburgh, April 18th, 1783.

SIR,

PRIESTS and poets were once the excluſive hiſtoriographers of the world; and it did not belong to men, who were not anointed or inſpired, to remove the veil under which the genuine features of truth were concealed.

Happily for you, my ſpirited countryman, thoſe times are no more; and though you are neither a prieſt nor a poet, you may, without profanity or raſhneſs, enter the liſts with an hiſtorian, who is not only a prieſt, but has many prieſts and poets in his train.

On the faithful page of hiſtory, the final doom of mankind, ſo far as the world can award, is determined; and there is no wonder if men anxiouſly enquire concerning the fidelity and impartiality of their judges, and the veracity of the evidence on which the awful judgment has been founded and pronounced.

You, Sir, animated by theſe conſiderations, have happily reſcued a beautiful and injured Queen from the Rhadamanthean tribunal of her partial judges; and you have appealed to the public for a reverſal of the cruel ſentence which had been pronounced againſt her.

Bookſellers, Sir, have become the Mæcenaſes of our age; and authors, too often careleſs of immortality, write more for preſent profit than for laſting fame.

I ſuppoſe the fear of offending the high preſbyterian party, the deſire of pleaſing the Engliſh by an extenuation of the ungenerous conduct of Elizabeth, and the affectation of that impartiality and liberality of ſentiment which made him afterwards become even an apologiſt of the Spaniſh cruelties in America, induced your antagoniſt to avert his eye from the proofs which you have produced in vindication of the unfortunate Mary.

Authors may enrich themſelves, and may become the literary Cæſars of the day, by courting the prejudices of mankind, and diſentangling their conſciences from the laws of the Republic of Letters; for my part I would not

not wiſh to ſee my literary tercel riſe from the hand of Apollo, at ſuch vulgar game.

I would adopt the memorable motto of the prince of painters, and rather conſent to live in obſcurity, than to die without the hopes of immortality.

Perhaps you might expect that I ſhould take ſome notice of the neglect ſhewn by Dr. Robertſon of your literary challenge; but I am not diſpoſed, in anſwering your letter, to mention any circumſtances of a local and fugitive nature, which muſt of courſe fall into oblivion, whilſt the good that has been done in ſpite of them will be remembered: neither will I blot and defile theſe pages, which may meet the eye of poſterity, with any thing that can wound the feelings of a generous and ſenſible heart, on my own account. It does not become the friend and diſciple of the great lord Chatham, and the good lord Lyttelton, to complain in theſe times of the effects of party and faction, either in the civil or literary commonwealth.

Stunned by the ſudden accounts of the inſidious and unfriendly oppoſition made by an hiſtorian to the legal requeſts of a ſociety, inſtituted for the purpoſes of exploring the materials of hiſtory, I expreſſed myſelf publicly in terms that were ſevere, but not more ſo than the occaſion ſeemed to demand *.

It ſeemed as if a controlling jealouſy, on your account, had given riſe to a conduct too abſurd to be ſubmitted to ſerious ſtricture. Hereafter, I hope that popular author will be more careful to imitate the conduct of Bartholomew de las Caſas, than of cardinal Ximenes.

I am, Sir,

with regard,

your obedient humble ſervant,

BUCHAN.

* Dr. Robertſon, notwithſtanding his having accepted the place of a Member of the Scottiſh Antiquaries, oppoſed with violence their application for a Charter from the Crown.

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